Measuring up?

Evaluating implementation of Government commitments to young witnesses in criminal proceedings

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Cruelty to children must stop. FULL STOP.

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

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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The protocol was reviewed by an independent panel: Tink Palmer, Director of the *Stop It Now!* campaign; Dr Clare Wilson, Reader in Forensic Psychology, University of Portsmouth; and Lindy Brown, Assistant Director, Research in Practice.

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Thanks are due to 43 Witness Care Units and to police child protection units in Bedfordshire, Thames Valley and West Midlands who referred young witnesses to the project. Young witness support schemes also assisted, either by referring young witnesses directly or by highlighting young witnesses to local Witness Care Units: NSPCC young witness schemes in Northern Ireland, Devon and Cornwall, Surrey, Cheshire, Essex and South Wales; Victim Support's Nottingham Young Witness Service; and Humberside Young Witness Service, which reports to the area's Local Safeguarding Children Boards.

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.

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.

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.

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.

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.

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.

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).

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).

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[1] 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.

[1] 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 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).

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).

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.

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.

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".[2] 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.[3]

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.[4]
- 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).

[2] 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.
[3] 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.
[4] Available at: 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)[5], which consolidates existing witness commitments and processes into one document.[6] 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

[5] Available at: http://lcjb.cjsonline.gov.uk/area7/library/The_Witness_Charter.pdf
[6] 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.[7] 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)[8], 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[9] and Northern Ireland[10] have made separate but similar commitments to improve outcomes for children.

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[7] For a recent Ministry of Justice statement on this subject, see www.justice.gov.uk/docs/corporate-plan-2009-11.pdf
[8] Carried out for the Office for Criminal Justice Reform.
[9] Safeguarding Children – Working Together under the Children Act 2004. Welsh Assembly Government, 2007.
[10] *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[11]; 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.

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

[11] 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)[12], along with parents or carers of 172 of these children. This constitutes the largest group of young witness interviews thus far in the UK.[13] 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[14] 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

[12] Thirty-four did not proceed to interview either because the child did not give evidence, withdrew consent or could not be contacted.
[13] 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.
[14] 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.

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.[15] 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".

[15] 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.[16] 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.[17] 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.

[16] 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.
[17] 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[18] 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.[19]
- The "vulnerable" flag was set for 74 witnesses (50 per cent).[20] Parents described 55 of these children as particularly vulnerable[21] in some way.[22] 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).[23] Although there is no definition of "child abuse" for criminal justice purposes[24], 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

[18] There was a parent interview in respect of 142 of the 147 children referred by WCUs.
[19] '"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.
[20] 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.
[21] 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).
[22] 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.
[23] This flag can only be applied by the CPS in the CMS system and cannot be applied by WCUs.
[24] 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).[25]

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:

[25] 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[26]:
  - 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[27] 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.[28] 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).[29]
- 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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[26] 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.
[27] The Police Service of Northern Ireland has introduced forms equivalent to the MG11 and MG2.
[28] 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.
[29] 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[30] 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

[30] 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[31]
  - 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).

[31] 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.

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[32] 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

[32] See also: 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

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[33], 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.[34]
- 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

[33] 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.
[34] 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.[35]

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.

[35] 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).[36]

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

[36] 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.[37] 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.[38] 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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[37] 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.

[38] *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)

3.1.1 Time to trial

The time to trial was examined for young witnesses giving evidence in the study.[39] 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).

[39] This excludes four children who gave evidence in Newton hearings.

There were no WCUs in Northern Ireland and dates of defendants' first court appearance were not available. Information for 12 young witnesses[40] who gave evidence in Northern Ireland was therefore based on answers provided by parents and witnesses:

- The average time for five young witnesses between *reporting offences* and trial in magistrates' or youth courts was 13 months (ranging from nine to 16 months).
- The average time for seven young witnesses between *reporting offences* and trial in the Crown Court was around 20 months (ranging from 17 to 29 months).

3.1.2 Comparison with national statistics

The latest National Statistics from the Ministry of Justice on time intervals for criminal proceedings in magistrates' and youth courts relate to June 2008.[41] These do not give figures for the average time to trial in magistrates' or youth court. They do, however, provide an estimate (based on figures for the sample used in preparing the statistics) for the percentage of cases nationally within timeliness standards for the number of days between charge (or laying of information) and trial. A comparison with study cases in England and Wales[42] yields the following:

- In national figures, the proportion of defendants in magistrates' court whose cases came within the timeliness standard of 143 days is estimated at 81 per cent ± 2 per cent, compared with 59 per cent of young witnesses in the study (35 of 59 for whom study data were available) whose cases came within the standard.
- The proportion of defendants in the youth court whose cases came within the timeliness standard of 176 days is estimated at 94 per cent ± 1 per cent in the youth court, compared with 80 per cent of young witnesses in the study (35 of 44 for whom study data were available) whose cases came within the standard.

The most recent published statistics relating to the Crown Court are for 2007.[43] These do not measure the time to disposition from first appearance in the magistrates' court. Instead, time intervals are measured from the date cases were sent or committed from the magistrates' court to the start of trial:

[40] Three Northern Ireland witnesses gave evidence in an English Crown Court and were included in the analysis for England and Wales.
[41] See www.justice.gov.uk/docs/time-intervals-criminal-proceedings-june-2008.pdf
[42] Times to trial in this study were measured from the first court appearance and so measured a slightly shorter interval than those in Ministry of Justice statistics.
[43] See www.justice.gov.uk/docs/judicial-court-stats-2007-full.pdf

- The average time between sending or committal and start of trial for Crown Court trials in England and Wales in 2007 was 24.1 weeks, compared with an average of 32 weeks for 50 young witnesses for whom study data were available.

In all three categories (magistrates', youth and Crown Court trials), pre-trial delay for young witnesses in the study was longer, on average, than for all criminal cases in the most recent available statistical reports. All three differences between time intervals in the study sample and those in national statistics were significant at the 5 per cent level, although caveats about the randomness of the study sample apply.

3.2 Avoiding adjournments

The relevant literature emphasises the need to expedite cases involving children as far as possible. A trial date should only be changed in exceptional circumstances. Proper preparatory work and case management can help child witnesses. By exerting tight control at an early stage, it will be less likely that an adjournment will be necessary to safeguard the rights of the defendant (sections 4.1.3, 4.4.2, *Equal Treatment Bench Book*, Judicial Studies Board, 2005).[44]

It is CPS policy to give priority to child witness cases (section 5.82). If the defence seeks an adjournment, the prosecutor should draw the attention of the court to any adverse effect this may have on the witness, particularly where the witness is a child or has a learning disability (section 6.17, *Achieving Best Evidence* CJS, 2007).[45]

WCUs and other referring organisations were asked whether trials took place on the first scheduled date (families also provided information). In England and Wales, of 170 young witnesses:

- Trials went ahead or "cracked" (cases concluded without a trial) on the first scheduled date for 110 young witnesses (65 per cent of 170).
- 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).

[44] This guidance is also used by the judiciary in Northern Ireland.
[45] The CPS has, however, no control over whether adjournments requested by the defence are granted.

Several children and parents in England and Wales complained of the lack of information about adjournments:

"We received a text at 7.30 pm the night before saying that the trial was adjourned. No reason was given." (Alice, 13)

"I think that if they are going to be supported they need all the information, for example, why has the case been adjourned." (Parent of Sally, 15)

"As well as the three times we went to court because the case was listed for trial, we also went on a fourth occasion. This was because we got a letter saying the case was listed in court. It did not say if we had to go or not, so we went." (Dylan, 15)

A trial re-scheduled after witnesses arrived at court involved six hours of visually recorded statements. It had been listed before a bench of three lay magistrates who were only sitting together for one day. In other cases, witnesses referred to their case being re-scheduled because it was "double-booked'. The impact of over-listing was also mentioned by some Witness Service managers, for example:

"Due to targets set by the Courts Service, two and even three trials are put into the same youth court at the same time, all having multiple young witnesses. This is done in the expectation that some defendants will not show up or will plead guilty, but if these do not occur, you have young witnesses waiting a very long time before giving evidence."

Of 12 young witnesses who gave evidence In Northern Ireland:

- Trials went ahead on the first scheduled trial date for five children (42 per cent).
- Trials involving three (25 per cent) were re-scheduled twice; and two (17 per cent) were re-scheduled three times.

"It was really upsetting to be waiting all those hours and then to be told I'd to go another day." (Lorna*, 10)

"We were at court on the first trial date and waited for three hours but it was adjourned as the police officer did not attend. Also, my daughter's medical records [about the injury caused by the offence] were not at court and were also not there for the second trial date two months later. On the second date, it was suggested that the trial be adjourned again for the records to be obtained. We objected and trial went ahead. Why didn't they ask me to make sure the records were at court?" (Parent of Rachel*, 15)

3.3 Minimising waiting times before giving evidence

You should not have to wait more than one hour at the magistrates' court from the time you are asked to attend to when you are called to give evidence (two hours in the Crown Court) (*Courts Charter*, HMCS, 2007a).

The court staff must ensure, as far as is reasonably within their control, that victims who are witnesses do not have to wait more than two hours before giving evidence in criminal proceedings (section 8.6, *Victims' Code,* CJS, 2006).

Orders should be made for the child to come in at specific and realistic times to minimise waiting. Orders will generally deal with listing of the case as soon as possible, with a clear start (ie not behind another trial or as a "floater") and avoiding dates which are inconvenient for the child eg exam or holiday time (section 4.4.2, *Equal Treatment Bench Book,* Judicial Studies Board, 2005).

Courts should consider the order and timing of witness attendance so as to minimise inconvenience (section 5.65). The child's stress is likely to increase with the length of the wait on the day of trial. If a witness is vulnerable, the prosecution or defence will ask the court to give the case priority in respect of times and dates of hearings. Some judges have issued a practice direction that no child witness should be brought to court before 12 noon on the first day of a trial. Others require preliminary matters to be dealt with on the first day of trial, with the child called as first witness on the second day. It may be preferable for young children to give evidence in the morning (section 5.81, *Achieving Best Evidence,* CJS, 2007).

Witness attendance should be staggered and a "batting" order provided with the aim of minimising the time witnesses have to attend court or wait at court to give evidence (*A Standard for Communication between Victims, Witnesses and the Prosecuting Advocate,* CPS, 2006).

Witnesses should come away from the experience believing that the time they have devoted to a case has been well-spent (*Every Witness Matters: Components of 'Vision 2010'*, HMCS, October 2008).

Everyone involved in your case will seek to ensure that, from the time you are asked to attend court and give evidence, you do not have to wait more than two hours in the Crown Court or

more than one hour in a magistrates' court.[46] However, there are sometimes delays which are unavoidable. If the witness is a child, every effort will be taken to reduce the chances of them being kept waiting to give evidence. The prosecution or defence lawyer, court staff, Witness Service or other witness supporter will seek to: tell you as quickly as possible if your case cannot be heard on the day; give you an indication of how long you will have to wait before giving evidence and update you regularly; and inform you if you are likely to have to wait longer than expected and the reason for any delay (Standard 24, *The Witness Charter*, CJS, 2008b).

The commitment in the *Victims' Code* (CJS, 2006) that waiting times for victims to give evidence will be no more than two hours is actually weaker than that in the *Courts Charter* (HMCS, 2007a), which suggests that the waiting time for any witness should not exceed one hour in a magistrates' court and two hours in the Crown Court. However, unlike the Charter, the *Victims' Code* has a statutory basis.

Official statistics on witness waiting times are provided by surveys undertaken for two weeks in June and November each year. An analysis of figures for 2007 carried out for this study by HM Courts Service indicates average child witness waiting times of less than two hours. However, these times were measured from the scheduled court start time, or the time when the witness arrived at court if later, rather than the time of the witness's arrival at the court building. Also, these figures do not take account of witnesses who attend court on more than one day before starting their evidence (thus, if a witness waited for two hours without testifying on the first day of court attendance and waited for an hour on the second day before giving evidence, only the hour on the second day would be counted).

The study collected information about waiting times in England, Wales and Northern Ireland for 160 children called to give evidence at a trial or a Newton hearing and 14 called at a trial and at a retrial or appeal.[47] Families wishing to avoid the defendant were often advised to come to court early. Some witnesses who had no pre-trial familiarisation visit were also asked to come early so they could see a courtroom or TV link room before giving evidence. Prolonging overall waiting time at court, even for a constructive purpose, may in the end have a detrimental effect when young witnesses wait in less than ideal surroundings (see sections 7.2, 7.3 and 7.5, below). Waiting time was therefore measured from the time of

[46] These commitments also appear in the *Courts Charter* (HMCS, 2007a).
[47] This information was provided by parents and by young people where a parent interview was not conducted. In some cases involving extreme delays, it was possible to confirm times of court attendance with witness supporters.

children's actual arrival at court to the start of their evidence or being informed they were not required, including waiting on days when they were sent away without giving evidence.

In England and Wales, the average actual waiting time for 150 witnesses at a trial or Newton hearing was:

- 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, 43 (73 per cent) waited more than two hours.[48]

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

Twelve young people in England and Wales gave evidence at a re-trial or appeal. Adding together the total time each spent at court, their average (mean) waiting time was around nine hours, ranging from almost two hours to 21½ hours.

Information was available for 10 witnesses who gave evidence at trial in Northern Ireland. Their average actual waiting time was as follows:

- 6.3 hours at magistrates' or youth court (five young witnesses), ranging from 3.25 hours to 14.5 hours.
- 12.7 hours at Crown Court (five young witnesses), ranging from six to 20 hours.

Two Northern Ireland witnesses, sisters in the same case, gave evidence at the Crown Court in a case that involved a retrial. The first sister gave evidence at both the trial and retrial and waited a total of 37 hours. The second sister gave evidence only at the retrial: her evidence was taken on the tenth day of attendance at court (described in the next section) and she waited 49 hours in total.

While this project was unable to determine whether witness attendance was staggered to minimise waiting times in study cases, it appeared that this was not done consistently. An English Witness Service manager said that she could "count on the fingers of one hand" the

[48] The 50 witnesses in *In their own words* waited an average of five hours: Plotnikoff and Woolfson, 2004. *Evaluation of young witness support* reported an average wait for 111 young witnesses of over three hours: Plotnikoff and Woolfson, 2007a. Those studies measured children's actual waiting times to give evidence but did not distinguish waiting times by level of court.

number of young witness cases in which attendance was staggered. A number of children mentioned being asked to attend court at the same time as all other young witnesses in the case, with no discussion of a "batting order'. In one case, six young witnesses were all asked to attend at the same time on the same day, at trial and again at the appeal. Each time, several of them waited more than a day to give evidence.

In other cases, parents said:

"I wasn't given any run down when we got to court about what was going to happen and the order in which the children should give evidence. The youngest was taken last on the second day. My girls were very young [eight and 10] when they first went to court but it wasn't until the fourth time [of court attendance] that a timetable for giving evidence was set that was appropriate for their ages. If I had known the first time [the first trial] what I'd learned by the fourth, I'd have insisted on a timetable for them." (Parent of Petra*, 9, and Vera*, 11)

"I think you should be told straight away which order you are to be called in to give evidence." (Parent of Louise, 14)

Some of those who experienced long waits before giving evidence included those with conditions which made delay particularly inappropriate. These included a 14 year-old with Asperger's syndrome, an autistic spectrum disorder, whose parent said that the "only issue for him was extra stress if he was anticipating something and having to wait". He was not called to give evidence on the first day of trial, despite being required to attend, and had a further one and a half hour wait before giving evidence on the second day. While one 13 year-old with attention-deficit hyperactivity disorder (ADHD) waited only 15 minutes to give evidence, two others with the same condition waited at court for more than a day.

One young witness who waited for over four hours was told that the delay was because the judge would not sit until an usher was available.

3.4 Attending court only when needed to give evidence

Every effort will be made to ensure that you are only asked to attend court on the day on which you are required to give evidence (Standard 14, *The Witness Charter*, CJS, 2008b).

In 2004, the Rt Hon. Lord Justice Judge, Deputy Chief Justice of England and Wales, wrote to all resident judges drawing their attention to the findings of *In their own words* (Plotnikoff and Woolfson, 2004). His letter contained several good practice proposals, including the suggestion that children "can give their evidence more effectively if they are fresh in the

morning".[49] In a different study, listing officers indicated that they may not necessarily be constrained by a judicial direction in a specific case that vulnerable witnesses receive a fresh start. Listing officers often put other matters before the judge first, which usually resulted in delays to the evidence of young or other vulnerable witnesses (Plotnikoff and Woolfson, 2007b).

This study had information on court attendance times for 152 young witnesses who gave evidence in England and Wales and 12 who testified in Northern Ireland. In England and Wales:

- 114 (75 per cent of 152) began their evidence on the first day of attendance at court (fewer than in previous studies[50]).
- 77 (51 per cent of 152) began their evidence in the morning of the first day (an improvement on a previous study[51]).
- 94 (67 per cent of 140 who gave evidence only once) completed their evidence on the first day.

Twelve children gave evidence at courts In Northern Ireland:

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

Across both jurisdictions, 46 witnesses (38 in England and Wales and eight in Northern Ireland, ie 28 per cent of 164) did not give evidence on their first day of their court attendance: 38 gave evidence beginning on the second day, four on the third day, two on the fourth day, one on the fifth day and one on the tenth day. The child who did not give evidence until the tenth day of court attendance was a ten-year old witness in Northern Ireland. On the first trial date she and her sister attended court and the trial was adjourned; on

[49] The *Witness Charter Consultation* (2005) proposed that where possible, young witnesses at Crown Court should attend on the morning of second day of trial to reduce waiting and so that they give evidence when they are fresh (proposed Standard 14, section 3.32). This language did not appear in *The Witness Charter* (2008). Office for Criminal Justice Reform guidance to court staff on implementing *The Witness Charter* issued in April 2008 states that good practice includes consideration of morning or afternoon listing of trials to ensure witnesses wait no longer than necessary.

[50] Davies and Noon (1991) reported that 69 per cent of 154 young witnesses gave evidence on the first day; Plotnikoff and Woolfson (2004) reported this for 78 per cent of 50 young witnesses and in (2007a), for 93 per cent of 111 young witnesses.

[51] Plotnikoff and Woolfson (2007a) reported that 41 per cent began their evidence in the morning of the first day they attended court.

the second, she attended for three days without giving evidence when the trial was halted because of a jury problem (her sister gave evidence on two of these days). At the re-trial both girls attended for three days without giving evidence when the trial was stopped when one of them fell ill. At the second re-trial, she attended for three days and gave evidence only on the fourth day, following her sister's evidence.

Some of the other children who attended court for more than one day before giving evidence said as follows:

"The first day I didn't do anything. The second day I didn't do anything except I watched a bit of my video. The next day I watched the rest of my video and I answered the questions then." (Hector, 10)

"I would have liked to have been seen quicker at court and not waited for wasted days both times. I would have liked to have been called when they needed me – the delay made me even more nervous." (Elsie, 16)

3.5 Timeliness of applications for special measures

Initial decisions about special measures directions will be taken at the plea and case management hearing, or a date fixed for rulings to be made. It is important to achieve as much certainty as possible about how the witness will give evidence and the arrangements for court attendance, preferably at an early stage in the proceedings (section 6.1, *Achieving Best Evidence*, CJS, 2007).

Special measures applications are to be filed in youth court within 28 days of defendant's first appearance; in magistrates' court within 14 days of the entry of a not guilty plea; and in Crown Court within 28 days of committal or transfer (Rule 29.1(4), *Consolidated Criminal Practice Direction*, Ministry of Justice, 2004).

Project referral forms provided only patchy information about dates of special measures applications and other case events. However, the study was able to measure the timeliness of 40 special measures applications for witnesses in the youth court and Crown Court in England and Wales:

- Applications for nine of 15 witnesses giving evidence in youth court (60 per cent) were made in excess of 28 days after the defendant's first appearance.

- Applications for 16 of 25 witnesses in Crown Court (64 per cent) were made in excess of 28 days after committal or transfer, sometimes many months after.

Taken together, 63 per cent of these 40 special measures applications were made out of time.

Some young people only found out about decisions relating to applications close to the trial date:

> "I would have liked to know earlier that there would be screens as I was worried that there wouldn't be any and he [the defendant] would see our faces. I knew there was a possibility that there would be no screens. Mum had to make phone calls to the WCU to sort this out." (Jason, 13)
>
> "I knew I wanted to use the TV link but three or four days before the trial I was told they still hadn't decided which special measures to apply for, because of my age." (Esther, 16)

Some applications were only made on the day of trial:

> "We were not informed as to whether witness screens were available for my son's use while giving evidence until the morning of the court case. This only added to his stress." (Parent of Jason, 13, who decided he would prefer screens at a pre-trial visit to the court)

In one case, a girl was given the choice on the day of trial of the case being adjourned for a special measures application to be dealt with or giving evidence that day in court (she took the latter option). Several witness support organisations described special measures applications made on the day of trial as a problem. One commented that applications were often made for only some types of witness:

> "This was a very timid, scared witness who had to go into court and would have benefited from the TV link. Why are children allowed into court here? Unless it is a violent or sexual offence, CPS [locally] often does not consider special measures. It's appalling."

4 Familiarisation visit to the court

4.1 The offer of a visit

Children can visit the court before the trial (p 14, *Children and young people*, CPS, 2006).

As part of the detailed needs assessment, WCUs will explore with every witness whether they would benefit from a pre-court familiarisation visit. A full explanation of this service, usually undertaken by the Witness Service, is given to ensure that witnesses are able to make an informed decision. Where a pre-court familiarisation is requested, the WCU will refer the witness to the Witness Service in accordance with an agreed protocol (section 5.48, *Achieving Best Evidence*, CJS, 2007).

You will be offered the opportunity to visit the court before the trial. These pre-trial visits will be arranged by the WCU, defence lawyer or the Witness Service or other witness supporter in conjunction with the court staff (Standard 17, *The Witness Charter*, CJS, 2008b).

The NSPCC handbook for child witness supporters *Preparing young witnesses for court* (Plotnikoff and Woolfson, 1998) stresses the key role of the familiarisation visit to the court before the day of trial in alleviating young witnesses' anxieties and helping them reach an informed view about special measures (Plotnikoff and Woolfson, 1998; see also Plotnikoff and Woolfson, 2004, 2007a). The *No Witness No Justice* witness care model expects such a visit to be offered at several points, particularly the "witness warning" stage.[52]

A parental interview was conducted for 172 children:

- Parents said 130 (76 per cent of 172) were offered a pre-trial visit.[53]
- 84 (65 per cent of 130) accepted and had a visit.
- Two (2 per cent) accepted but said there was no follow-up.
- 44 (34 per cent) refused. For several, the timing of the proposed court visit was not convenient or the court was too far away or inconvenient to reach.

[52] Police/CPS Victim and Witness Care Delivery Unit email to authors 16 December 2008.
[53] This compares with 60 per cent of eligible witnesses aged 16 and over who were offered a visit and who were interviewed for witness WAVES surveys: Moore and Blakeborough, 2008.

"We couldn't find a time that suited us and the court. The court couldn't offer a visit after 3pm. Mum is a teacher and we couldn't go earlier." (Enid, 14)

"We turned it down as it is six miles from home and we'd need to catch two buses to get there." (Parent of Dylan, 15)

Several parents acknowledged declining offers of a pre-trial visit to the court without discussing this with their children, because they did not want to remind children unnecessarily about the trial. From what young people said at interview, it was evident that some did not reveal the full extent of their anxieties to their parent before the trial, and would have appreciated a visit to the court. When made aware of this, some parents regretted their decision to refuse such offers. More detailed explanation of the benefits would help,[54] as would a renewed offer closer to the trial date if the offer is declined.

Witness support organisations were asked how they were notified about visits. Responses indicated that information was not passed to them systematically, making it difficult for them to follow up if offers were declined (bearing in mind that some parents may not have consented to their details being passed on), or where parents could not be contacted:

- 34 of 52 Witness Services and one of seven young witness schemes (in all, 59 per cent) were routinely notified where the offer of a visit was accepted.
- 17 Witness Services and one young witness scheme (in all, 31 per cent) were routinely notified where the offer of a visit was declined.
- 15 Witness Services and three young witness schemes (in all, 31 per cent) were routinely informed when WCUs could not contact parents.

Comparing young witnesses' experiences across court regions, only 41 per cent of young witnesses in the Southeast and London regions had a pre-trial visit to the court, compared to 60 per cent of those in the Northwest and Wales regions (see Appendix 3).

4.2 The visit

Half of the study sample – 91 young people – had a familiarisation visit to the court. Of these, 76 (84 per cent of 91) said the visit helped them feel more confident or to know what to expect at trial. Young witnesses across the age ranges found court visits to be helpful:

[54] "Further promoting the benefits" of court familiarisation visits was recommended as a result of witness WAVES surveys: Moore and Blakeborough, 2008.

"I was scared about it until I went to look round and then it made me feel more comfortable." (Dawn, 14)

"The visit made me feel a bit more relaxed. I knew where I was, where [the defendant] would be, rather than going on the first day and not knowing anything." (Lauren, 16)

"It helps to see the court beforehand because in the TV link room you can't see very much. It's also important to know how you get to the TV link room – it was like going through tunnels and lots of locked doors which could be off-putting." (Esther, 16)

Ten young people (11 per cent of 91 who had a pre-trial visit) said it was unhelpful or made them feel more worried:

"It's a very old building and quite scary. I didn't pay enough attention to the courtroom because I didn't think I'd be in there." (Connie*, 17, who subsequently gave evidence in court)

"On the day we all felt terrible. We went to a court we had never seen before. It wasn't the one we went to visit before the trial, so what was the point of us looking around a place that wasn't where the case was held?" (Carrie, 16)

Those who had a familiarisation visit were asked about its timing. Perceptions about "the right time to visit" largely depended on the needs of the individual young person:

- Eight (9 per cent of 91) saw the court the day before the trial (five thought this was about the right time).
- 30 (33 per cent) went two to seven days before (23 thought this was about right).
- 30 (33 per cent) went one to four weeks before (26 thought this was about right).
- 21 (23 per cent) went over a month before the trial date (11 thought this was about right).
- 65 (71 per cent) thought the visit had taken place at about the right time, 11 (12 per cent) thought an earlier visit would have been better and eight (9 per cent) thought the visit was too early.

Twenty-seven young witnesses[55] who had at least one visit (30 per cent) would have liked to visit the court again. Only five children went more than once. Those whose trials were re-

[55] Twenty of these young people saw a supporter before trial for the purpose of preparation for court.

scheduled sometimes had a long gap between the visit and the trial, and would have appreciated another visit closer to the trial itself:

> "There was a problem about the pre-trial visit because it happened before the original trial which was then put back for over three months. It would have helped if I could have gone again but this wasn't offered." (Jeremy, 14)

4.2.1 Those who did not visit the court before the day of trial

Of 91 young witnesses who did not have a pre-trial visit before the day of trial:

- 64 (70 per cent) were shown a courtroom and/or live link room on the day of trial.
- 27 (30 per cent) did not see a courtroom or live link room before giving evidence.

Tours on the day of trial usually required young people to be at court earlier than might otherwise have been necessary and could feel pressured:

> "The Witness Service phoned and suggested I come half an hour early on the day of the trial for a 'quick look around'. It was a rushed visit and nothing was explained." (Terry, 14)

Many of those who did not see facilities in advance would have liked to do so.

> "I would have liked to have seen the court before." (Diana, 7)
>
> "It should be law that you get to go to court to have a look before the day." (Martin, 15)

4.3 Answering the young witness's questions

We will explain how we do things in court and answer any questions (*Courts Charter*, HMCS, 2007a).

The NSPCC handbook for child witness supporters *Preparing young witnesses for court* (Plotnikoff and Woolfson, 1998) emphasises the importance of exploring young witnesses' worries and questions as a vital means of reassuring them (Plotnikoff and Woolfson, 1998). Of 91 children who had a visit, 83 (91 per cent) said those taking them round the court checked if they had any questions:

> "The witness supporter answered loads of questions. She was fantastic." (Dane, 13)

Some children did not have the opportunity to ask all their questions:

> "The Witness Service volunteer talked over me when I asked questions so I didn't find out what I wanted to know." (Gale, 15)
>
> "I would have liked them to be more direct with [my son]. The Witness Service talked to the adults about the young witnesses and not to the young witnesses themselves." (Parent of Ted, 13)

Some others also found the visit less informative than it might have been:

> "They didn't really explain it very much – it would have been good if they'd spent more time. I wanted someone that told you what was going to happen in more detail. The supporter took us round and asked if we had questions but it was hard to know what to ask at the time." (Karen, 14)
>
> "The supporter was a calming person but she was not well-informed. It was last minute and her answers were general, not specific. We were in two minds about [my son] going to court but I don't think we had much choice." (Parent of James, 14)

4.4 Who was present at the visit

When the court visit is to occur, the CPS will advise prosecuting advocates who should consider attending in order to meet the witnesses (*A Standard for Communication between Victims, Witnesses and the Prosecuting Advocate*, CPS, 2006).

None of the young witnesses in the sample who visited the court before trial met the prosecution advocate. This policy, while desirable, seems quite unrealistic.

The survey of 59 support organisations asked about arrangements for pre-trial visits (Appendix 5, Table 16). One manager reported that at two local Crown Courts, the Witness Service was not involved in visits which were conducted by the courts' young witness liaison officers. All other support organisations were involved in familiarisation visits. The 91 young people who had a pre-trial visit said they were accompanied as follows (some were escorted by more than one person):

- 46 (51 per cent) by Witness Service supporters
- 33 (36 per cent) by young witness scheme supporters

- 22 (24 per cent) by a court usher or other member of the court staff.
- 12 (13 per cent) by a police officer.
- 15 (16 per cent) some other person they did not know (persons meeting young witnesses on court visits may not have identified themselves clearly, a problem that may also have arisen when prosecutors introduced themselves at trial).

4.5 Demonstrating special measures

Pre-trial visits should, where practicable, involve giving vulnerable or intimidated witnesses the opportunity to practise using the live link, providing the court has granted its use (section 5.22). The pre-trial visit may cover [inter alia] a demonstration of any special measures applied for and/or granted, for example practising on the live link and explaining who will be able to see them in the courtroom (section 5.48). It may be useful for the judge or magistrate to enquire whether the witness has had a pre-trial visit at which the live link has been explained and or/demonstrated (section 6.53). Key tasks for the supporter include liaising with the Witness Service to arrange a familiarisation visit to the court before trial and ensuring that the young witness, and their parent and carer, if appropriate, are shown special measures ordered by the court (Appendix F3, National Standards for Young Witness Preparation, *Achieving Best Evidence*, CJS, 2007).

If the TV link is to be used, we can arrange for the witness to see the room and how the equipment works before the trial (*Courts Charter*, HMCS, 2007a).

During your visit you should, where feasible, be given the opportunity to practise using the live TV link facility if the use of this measure has been granted (Standard 17, *The Witness Charter*, CJS, 2008b).

Giving an informed view about special measures requires young witnesses to have been shown screens in place in court and to have seen and practised on the live link, preferably from both the live link room and courtroom.[56] Of the 91 who made a pre-trial visit to the court or remote live link site:

- 84 (92 per cent of 91) saw the room where they would wait before giving evidence.
- 82 (90 per cent) saw a live link room.

[56] This can reassure children that the judge or magistrates can always see them. Some children in the study did not tell the judge or magistrates that they had a problem with questions because they could not see them over the TV link.

- 20 (22 per cent) practised speaking on the link (the guidance above indicates, variously, that this should happen where live link applications have been either applied for or granted).[57]
- 80 (88 per cent) saw a courtroom.
- 20 (22 per cent) were shown screens in the courtroom.
- Two (2 per cent) practised speaking in the courtroom from the witness box.
- One saw part of a trial from the public gallery.

In this study, of 129 who used the live link, 65 (50 per cent) had visited the court and 17 (13 per cent) had practised on it beforehand. The number making a familiarisation visit represents a slight improvement over some previous studies, although the proportion given the opportunity to practise on the live link during the pre-trial visit remained low:

- Davies and Noon (1991) reported that 40 per cent of children in their live link study visited the court before trial; 21 per cent had the opportunity to practise on the link.
- Plotnikoff and Woolfson (2004) found that 38 per cent of young witnesses who used the live link had visited the court; 20 per cent had practised on the link.
- Plotnikoff and Woolfson (2007a) reported that 85 per cent of young people supported by young witness schemes and 29 per cent of those in the comparison group had a familiarisation visit to the court. Of these, 53 per cent of scheme-supported witnesses and none in the comparison group had practised on the live link.

[57] The timeliness of 40 special measures applications was measured for this study and 63 per cent were made out of time: see section 3.5.

5 Pre-trial preparation for court

5.1 Referral for support

Support and preparation, by providing information about the court process, helps all witnesses to produce better evidence and can influence the witness's decision to proceed with the case in the first place (section 5.1). All witnesses are entitled to an explanation of their role at court and assistance to ensure that they are able to give their best evidence. Support is appropriate at all stages of the case (section 5.12). Local agreement should be reached as to who is responsible for pre-trial preparation and also for ensuring that the necessary preparation has been or is being undertaken. Regardless of which profession is best placed to coordinate pre-trial preparation and support, it is vitally important that this begins as soon as the witness's vulnerability is identified and the police/CPS become aware that the witness may need to attend court (section 5.28, *Achieving Best Evidence*, CJS, 2007).

When children are witnesses we must make sure they are well supported and able to give their evidence in court with as little stress and anxiety as possible (p 5). We will always look at the help we can give children when we decide whether we can prosecute cases (p 9). Each child witness will have his or her own witness care officer who will know if there is a child witness scheme in the area, or may be able to arrange similar help if there is no local scheme (pp 11, 14, *Children and young people*, CPS, 2006).

Witness care officers are expected to explain and recommend services offered by the Witness Service, if consent for referral to the Witness Service was not given at the interview stage or not recorded on the MG11 (section 5, *Guidance on arranging a joint-working agreement between Witness Care Units and the Witness Service*, Office for Criminal Justice Reform, 2006).

Your WCU will maintain and update a contact directory of support organisations in your area and refer you to those organisations that can help meet your needs (Standard 11, *The Witness Charter*, CJS, 2008b).

Young witnesses' needs for assistance should be assessed soon after the point of charge. *Evaluation of young witness support* (Plotnikoff and Woolfson, 2007a) suggested that all that may be needed at that stage is an explanation of services on offer and reassurance that help will be available later if the case goes to court. Referral for support requires consent. *Evaluation of young witness support* found some variation in procedures for referral to young

witness schemes. Good practice was demonstrated in one area where information about the scheme was given to witnesses at the time a statement was taken but consent was not formally recorded at that stage. If agreement was given, witness contact details were then passed to the scheme (part of the data-sharing arrangements of the Local Safeguarding Children Board for 'children in need'[58]); families could decline the offer of support when contacted by the coordinator but very few did so.

In this study, the 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 is reached. Also, many did not receive advance notice of all young witnesses in a systematic way[59]:

- 13 support organisations (22 per cent of 59) said they were notified about *some* young witnesses by the police at the point of charge or by the WCU before a plea was entered.
- 46 (78 per cent) were informed about *some* young witnesses by the CPS and/or WCUs after the defendant entered a "not guilty" plea.
- 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.

The survey of 52 Witness Services and seven young witness support schemes asked how young witnesses and their families found out about their services. The majority did not engage in direct outreach to families by phone or letter.[60] Few described themselves as proactive in tracking all special measures applications to identify and follow up with young witnesses. Responsibility for explaining and recommending support services usually fell to WCUs and the police:

[58] Section 17, Children Act 2004.
[59] Witness Services and young witness support schemes provided information about 108 young witnesses interviewed for this project. Supporters had been alerted to 105 of these young witnesses (97 per cent of 108) before the day of trial, though not necessarily to their needs: see section 2.2.1 above.
[60] In the survey of 59 support organisations, 26 (44 per cent) thought that the introduction of WCUs had increased demand for their services. Four (7 per cent) thought WCUs had reduced this demand; 16 (27 per cent) said WCUs made no difference; and 13 (22 per cent) did not know or did not respond to this question.

Table 3 Finding out about support service organisations

	Court-based Witness Services (52)	Young witness schemes (7)	Total % of 59
Service wrote to most young witnesses/parents before trial	14	4	31%
Service phoned most parents before trial	25	3	47%
Police informed witnesses/parents about the service and pre-trial visits	29	6	59%
WCU informed witnesses/parents about the service and pre-trial visits	50	6	95%

Interviews with parents indicated that:

- 85 children (49 per cent of 172) were offered face-to-face contact with a supporter before trial.
- 72 (85 per cent of those offered) accepted and 13 (15 per cent) declined.

Guidance indicates that support is appropriate at all stages of the case but consistent with the feedback from support organisations, the majority of young witnesses in the study who received pre-trial support were not offered this at an "early" stage of the case (see below). Some parents and children would have liked support earlier:

"I would have liked more help and information at the beginning." (Cliff, 15)

"It happened to me too so I didn't feel I could support my children very well. In general there was no help after the first weeks when it first happened then a lull until just before the trial." (Parent of Derek, 15 and Evelyn, 17)

However, even offers of support close to the trial date were felt to have come "at about the right time" by most parents whose child saw a supporter before the trial. Interviews were conducted with parents of 72 children who received pre-trial support:

- 12 (17 per cent of 72) first met the supporter within a week of the trial (11 of these said this was about the right time).
- 19 (26 per cent) first met the supporter one to four weeks before (15 said this was about the right time).

- 27 (38 per cent) first met the supporter over a month before the trial (20 said this was about the right time). The duration of the supporter's involvement in some of these cases was a by-product of trials that were adjourned.
- 14 (19 per cent) could not recall when the child first met the supporter.

The range of views about timing suggests that there is no standard "best" time to provide pre-trial support: timing should take account of the needs and wishes of the child. For some children, earlier contact was an important reassurance.

Of 182 young interviewees, 80 (44 per cent of 182) had neither a pre-trial visit nor pre-trial contact with a supporter. Interviews with parents of 78 of these children indicated that 30 (38 per cent of 78) were not offered either service.[61] These included some of the most vulnerable children in the study, including the only one in the sample who was assisted by an intermediary at a Crown Court trial (an 11 year-old with severe autism). The girl's evidence began by remote link but she was brought to a court she had never seen before on her final day of testimony.[62] A great deal of forethought had gone into planning and scheduling how her evidence would be taken, but no support was offered to the child and parents. Her mother said:

"We wanted J to be properly prepared for court. We tried various things. We are reasonably resourceful but this was all very difficult. Coming up to the trial, when we had not been offered any help, we called a young witness scheme in another part of the country. They sent us the Young Witness Pack and DVD but they couldn't visit us. The pack was very helpful, particularly the pop-up courtroom and DVD as visual things really help J. The parents' booklet had lots of information we didn't know. The police said they had not heard of the Young Witness Pack. They wouldn't explain anything – they seemed to wonder why we were asking about court. They seemed concerned that we were going to coach her. We didn't feel some of the officers were very sensitive about our need for information. We got nothing at all. I didn't know what I could or couldn't do. Overall, we were totally disillusioned about the way we were treated. No one listened to us. The police deal with this type of thing every day and they could not see it through our eyes. I wanted to say 'What if it was your daughter?'" (Mother of Jolie, 11)

[61] Parents said 40 (51 per cent of 78) were offered and refused a visit and 11 (14 per cent) were offered and refused contact with a supporter.
[62] The trial court was sitting at a different Crown Court in order to accommodate the remote link and had run out of time at this location when the girl's evidence took longer than anticipated.

The intermediary said "So much time was spent making sure that the witness was calm that her parents were forgotten".[63]

5.2 Who provided support and explanations

Of 182 young interviewees, 81 (45 per cent) said they met someone before the day of trial whom they described as helping prepare them for court[64]:

- 47 (58 per cent of 81) were seen by young witness scheme supporters; 28 (35 per cent) by the Witness Service; five (6 per cent) by police officers; and one (1 per cent) by Salford City Council Witness Outreach.
- 47 (58 per cent) received a home visit and two were visited at school. One home visit was conducted by a court-based Witness Service.[65]

Comparing young witnesses' experiences across court regions, only 39 per cent in London and the Southeast regions saw a supporter before the day of trial, compared with 67 per cent in the Southwest (see Appendix 3).

National Standards for Young Witness Preparation and National Standards for the Court Witness Supporter in the Live Link Room (Appendices F and G, *Achieving Best Evidence,* CJS, 2007) are predicated on the assumption of continuity of support before court and at trial and, by implication, at any appeal or re-trial.[66] The Standards state that "willingness and ability to offer continuity of support throughout the trial" are key characteristics of the role of young witness supporter. The NSPCC's *Preparing young witnesses for court* (Plotnikoff and Woolfson, 1998) states that young witnesses are likely to derive emotional support from the presence at court of a supporter with whom they already have a relationship of trust (Plotnikoff and Woolfson, 1998). Continuity of support throughout pre-trial preparation and trial wherever possible is also the policy of Victim Support National Centre in respect of the Witness Service.[67]

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[63] The intermediary's role is distinct from that of a witness supporter, although the intermediary may facilitate the work of the supporter and, for example, accompany the witness on a familiarisation visit to the court: section 2.3, *Intermediary Procedural Guidance Manual* (CJS, 2005).
[64] For a regional comparison of those who saw a supporter before the day of trial, see Appendix 2.
[65] In the survey of support organisations, 11 of 52 Witness Services (21 per cent) and all seven young witness schemes conducted home visits.
[66] CPS Policy Division confirmed this position, email to authors 4 May 2006.
[67] However, continuity is particularly difficult where the original trial date is adjourned or the child does not give evidence on the date planned.

Pre-trial contact with a supporter did not always mean continuity of support from the same person through to trial. Parents indicated that only 35 children (49 per cent of 72) saw the same supporter before and on the day of trial (sometimes supporters were unable to attend trial dates that were adjourned). Continuity of support was considered reassuring when it occurred and disruptive and sometimes upsetting when it did not.

In all, 170 young witnesses (93 per cent of 182) said someone helped explain to them about court (often on the day of trial). Of these:

- 77 (45 per cent of these 170) were helped by the court-based Witness Service
- 38 (22 per cent) by a police officer
- 23 (16 per cent) by a prosecutor
- 21 (12 per cent) by a court usher
- eight (5 per cent) by a witness care officer
- four (2 per cent) by a supporter from a young witness scheme whom they met for the first time on the day of trial
- seven (4 per cent) by someone whose role they did not know
- 12 (7 per cent) said no one helped explain things or answer their questions.

5.3 Tailoring support to the needs of the individual witness

The additional stress of coping with an unfamiliar situation is likely to reduce the ability of witnesses to participate and to respond to questioning, or to effectively recall events in order to assist the fact-finding process of the criminal justice system. Preparation and support that are planned to fit the needs of individual witnesses can help to prevent and alleviate this problem (section 5.1). It will be necessary to identify appropriate additional support and preparation to help vulnerable and intimidated witnesses to help them give the best evidence they can (section 5.3). WCUs will seek to ensure that individually tailored support is provided to all victims and witnesses (section 5.14, *Achieving Best Evidence*, CJS, 2007).

Across the sample as a whole, 91 young witnesses (50 per cent of 182) made a pre-trial familiarisation visit to the court and 81 (45 per cent) saw a supporter for the purpose of preparation for court. This section examines offers of these services to witnesses identified by WCUs or the police as needing additional support and receipt by witnesses in particular need of help.

5.3.1 Witnesses identified by WCUs or police as needing additional support

Referral forms for 154 children were completed by WCUs or police officers in England and Wales. 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.

Information was available from a parent of 148 of these 154 children in respect of what support was offered: 48 parents of the 50 children identified as needing additional support and 100 of the remainder. Numbers of children whose parents recalled receiving offers (irrespective of whether they were accepted) were as follows:

Table 5 Offers of support

	Offers made to parents of 48 children identified as in need of additional assistance	Offers made to parents of the other 100 children
Familiarisation visit to court before day of trial	35 (73%)	76 (76%)
Face-to-face contact with a supporter (to explain about court) before day of trial	24 (50%)	40 (40%)

The proportions who visited court were similar but the difference between the two groups in respect of offers of contact with a supporter was significant at the 5 per cent level.

5.3.2 Witnesses in particular need of help

The study identified two groups which it judged as being in particular need of help (see also sections 10.2.2 and 10.3.1):

- 95 young people (52 per cent of 182 in the sample) who described themselves as experiencing stress symptoms before trial.
- 137 children (80 per cent of 172 for whom parental information was provided) to whom one or more of the following applied, according to their parents: health or development issues; a short attention span; poor levels of speech or understanding; unwilling to say if they did not understand a word or question; described as intimidated; feeling worried about going to court; or having stress symptoms while waiting to go to court.

The assistance provided[68] to the above groups was as follows:

Table 4 Support provided to children in particular need of assistance

	Children who experienced stress symptoms before trial	Children (identified by a parent) to whom one or more concerns applied
Familiarisation visit to court before trial	53 (56%)	72 (53%)
Face-to-face preparation for court from a supporter before trial	43 (45%)	62 (45%)

5.4 The difference made by pre-trial support

The supporter is expected to help young witnesses to feel more confident and better equipped to give evidence; understand the legal process and their role within it; encourage them to share their fears and apprehensions about the court process and thus assist the young person in giving their best evidence in court (Appendix F1, National Standards for Young Witness Preparation, *Achieving Best Evidence*, CJS, 2007).

Research demonstrates that young witnesses experience fear and anxiety directly attributable to their lack of understanding of the legal process and their role (for example, Saywitz, 1995). Children given a better understanding of the process express the least anxiety about giving evidence (Goodman et al, 1998).

All 182 young witnesses were asked whether they had been given key advice about court. Those who had seen a supporter before the trial were more likely to have received this. In the table below, all differences between figures in 2nd and 3rd columns are significant at the 5 per cent level.

[68] Bearing in mind that witness support may be offered but declined: see section 5.1 above.

Table 5 Impact on child's knowledge of meeting a supporter pre-trial

Young witnesses who had been told:	Those who had met a supporter before the day of trial (% of 81)	Those who had not met a supporter before the day of trial (% of 101)
they could tell the court if they did not understand a question	73 (90%)	75 (74%)
they could tell the court if they needed a break	69 (85%)	64 (63%)
that they could tell the court if they felt upset	63 (78%)	52 (51%)
that a lawyer might say they were not telling the truth	69 (85%)	56 (55%)

The 81 young interviewees who received pre-trial support were asked about its impact: 77 (95 per cent of 81) said the supporter made them feel better about going to court.[69]

A parental interview was conducted for 73 of these children. Parents were asked how often these children met their supporter:

- 25 (34 per cent) met the supporter once.
- 12 (16 per cent) did so two or three times.
- 21 (29 per cent) met the supporter between four and 15 times.
- Parents of 15 children (21 per cent) could not recall how often their child had seen a supporter.

These 81 young people and parents of 73 of these children were asked if the child had had enough time with this person before the trial. All the children whose parents thought[70] there had not been enough contact had met the supporter once. Children whose parents thought there had been enough contact had met the supporter between one and 15 times.

Table 6 Did the child have enough pre-trial contact with the supporter?

	No, not enough contact	Yes, enough contact
Child's view (% of 81)	17 (21%)	63 (78%)
Parent's view (% of 73)	10 (14%)	54 (74%)

[69] In *Evaluation of young witness support*, 96 per cent of children supported by specialist schemes said this support made them feel better about going to court: Plotnikoff and Woolfson, 2007a.
[70] Children were not asked how often they had met the supporter before trial: this information was only asked of parents.

These children and parents were also asked about how much difference the supporter made:

Table 7 How much difference did the supporter make?

	No difference	A little difference	A lot of difference	Made it possible for child to go to court
Child's view (% of 81)	0 (0%)	18 (22%)	30 (37%)	30 (37%)
Parent's view (% of 73)	2 (3%)	11 (15%)	27 (37%)	25 (34%)

Of 30 children who said the supporter (whom they met before trial) made it possible for them to go to court, 29 (97 per cent) identified a supporter from a young witness scheme, three identified one from the court-based Witness Service and two identified police officers (a few received pre-trial support from more than one source). Children supported by young witness schemes before trial were positive about the benefits:

"She explained everything and then I felt better about it." (Jake, 14)

Parents also benefited from support provided by young witness schemes:

"We couldn't have done this without them. Some days we didn't want the reminder of seeing the supporter but other times I couldn't have managed without her. You knew she was always at the end of the phone right there with you." (Parent of Vera*, 11)

"The supporter had to deal with us emotionally. We were very vulnerable. He was a great comfort – a tower of strength. Everything he said made sense. He was meticulous. We wanted to discuss my child's evidence but he said he couldn't hear about it." (Parent of Connie*, 17)

"Without this, I think it would have been extremely hard and frustrating. They are a godsend and every child should see them. They even helped me through listening to what they told my child." (Parent of Rea, 11)

5.5 Explanatory material

5.5.1 Young witness leaflets

The witness care officer is to ensure provision of young witness booklets to victims and their parent/carer in sexual, violence or cruelty cases (section 6.6, *Victims' Code*, CJS, 2006).

The supporter is expected to ensure that the young person has the Young Witness Pack[71] (Appendix F, National Standards for Young Witness Preparation, *Achieving Best Evidence*, CJS, 2007).

The police, WCU or defence lawyer will give you information to help you prepare for attending court. If you wish, they can give you contact details for the Witness Service. If the witness is a child, the police, Witness Service or other supporter will give them the Young Witness Pack and will seek to explain the content to them (Standard 15, *The Witness Charter*, CJS, 2008b).

Of 108 victims of sexual or violent offences in the study sample, 75 (69 per cent) received young witness booklets as required by the *Victims' Code* commitment. This proportion was no greater than in the sample as a whole. Of all 182 young witnesses interviewed for the study:

- 127 (70 per cent) received young witness booklets[72], mostly by post.
- 75 (59 per cent of those who received them) described the booklets as helpful.

The Young Witness Pack is now usually sent out by WCUs. When it was developed in 1998[73] it was intended as a tool to be used by supporters, both to inform children and as a vehicle to explore their needs and worries. Each child's booklet contained the following guidance:

"This book should be read with the assistance of an adult supporter who knows about court procedures and can answer the young witness's questions. The supporter can then pass on information about the young witness's needs to the police, CPS and court staff."

This guidance was omitted when the booklets were revised under "Criminal Justice System" logo by the Office of Criminal Justice Reform following a consultation exercise in 2006. It should be re-instated when they are next re-printed.

In the survey of support organisations, 29 of 52 court-based Witness Services (56 per cent) routinely provided young witness booklets before trial and 25 (48 per cent) helped explain the

[71] 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 and 0870 241 4680.
[72] Interviewers showed young people the range of *Young Witness Pack* booklets. Additional leaflets for children, *Millie the Witness* and *Jerome: a witness in court* were introduced by the CPS in November 2007, after this project was underway.
[73] The first version of pack materials was developed by the NSPCC, ChildLine, Home Office, Lord Chancellor's Department, CPS and Department of Health.

contents. All seven young witness schemes in the survey supplied booklets and explained the contents.

In this study, of 127 who received young witness booklets:

- 80 (63 per cent) had no one in a support role to help go through them. Of these, only 31 (39 per cent of 80) described the material as helpful.
- A young witness supporter or police officer went through the booklets with 40 young people (31 per cent of 127 who received booklets). Of these, 34 (85 per cent of 40) described the material as helpful.

Some children who had no one to help go through the leaflets acknowledged not looking at them at all. Some received material by post that was not age-appropriate (for example, a 14 year-old complained about being given a "colouring book" ie the booklet for younger children). Some witnesses did not see the booklets until they were waiting to give evidence at court.

"No one went over the booklets with me. I struggled with them." (Lenny, 13. His mother said that neither she nor her son could read well. This was a child supported by a young witness scheme which did not appear to have picked this up.)

"They need to do more with children before the trial, not just give books to their mother to go through with them." (Parent of Roger, 11)

In interviews with parents of 172 children, 125 (73 per cent) had received the booklet *Your child is a witness*, mostly by post.

In 2006, HM Inspectorate of Court Administration (2006) suggested that the Courts Service develop child-friendly leaflets about specific court buildings and courtrooms ("Suggestions for Further Action" and para 4.37).[74] In 2007, HM Courts Service produced court-specific leaflets for adult witnesses or parents of young witnesses.[75] None of the young witnesses in this study mentioned receiving a young person's leaflet about their local court.

[74] Pictures of actual court facilities at local courts such as courtrooms (with and without people and screens) and TV link rooms would be helpful, particularly for vulnerable witnesses. In the evaluation of the intermediary special measure, one intermediary wished to compile such materials to help remind a witness what she would see at court but was unable to get permission to take photographs in time to assist the witness before the trial: Plotnikoff and Woolfson, 2007b.

[75] www.hmcourts-service.gov.uk/infoabout/attend/witness/Leaflets-for-ProsecutionandDefence-Witnesses.htm Information about local courts is also available at www.hmcourts-service.gov.uk/HMCSCourtFinder

5.5.2 Explanatory DVDs

The supporter is expected to view, if appropriate, the video *Giving Evidence: what's it really like?* with young witness and their parent/carer (Appendix F, National Standards for Young Witness Preparation, *Achieving Best Evidence*, CJS, 2007).

The WCU or defence lawyer may give the young witness an explanatory DVD *Going to Court: a step by step guide to being a witness*, (HM Courts Service, 2007b) or they can collect it from the Witness Service or download it from: www.direct.gov.uk/goingtocourtvideo (Standard 15, *The Witness Charter*, Ministry of Justice et al, 2008).

Young witnesses were asked if they had seen or received the DVD *Giving Evidence: what's it really like?* This was produced by the NSPCC in 2000 and is now part of the Young Witness Pack[76]:

- 24 (13 per cent of 182) received the DVD, sometimes by post.
- 21 (88 per cent of those who received it) said it was helpful.
- 12 (50 per cent) said someone watched it with them and explained things. All 12 found it helpful. In five instances the person watching with them was a supporter and in seven it was a parent.

"This DVD was the most helpful thing in preparing me for court." (Jim, 13)

In the survey of support organisations, 17 Witness Services (33 per cent) and all seven young witness schemes routinely showed *Giving Evidence what's it really like*?

Children were also asked if they had received the DVD mentioned in *The Witness Charter* (CJS, 2008b): *Going to court: a step by step guide to being a witness* (HM Courts Service, 2007b). This DVD is aimed at adults and is suitable for teenage witnesses:

- 26 (14 per cent of 182) received the DVD. Eight mentioned receiving it by post.
- 10 (38 per cent of those who received it) who were teenagers described this as helpful. The seven youngest children receiving it were aged between nine and 12; none found it helpful. Six others said they did not watch it.

[76] During the study, some witness support organisations reported difficulty in obtaining copies. As of January 2009, Home Office Publications (0870 241 4680) advised it is in stock: reference number YWPDVD/08.

- Five (19 per cent) said someone watched it with them and explained things. Three of these watched it with a supporter.

> "The pebble people DVD has nothing to do with young people or the TV link." (Dora, 12)

In the survey of support organisations, 16 of 52 Witness Services (31 per cent) and one of seven young witness schemes (14 per cent) showed *Going to court – a step by step guide to being a witness*.

5.5.3 Information from the Internet and other sources

You can obtain witness information on the internet, including an explanation of the process, from www.cjsonline.gov.uk or www.hmcourt-service.gov.uk (Standard 15, *The Witness Charter*, Ministry of Justice, 2008).

Fourteen young people (8 per cent of 182) obtained information from other sources and 11 said this was helpful. Some of these children sought information from parents or acquaintances (eg a friend's father who was a police officer). None mentioned using the young people's information service, Connexions. Only eight children mentioned searching for information on the Internet and only one used the virtual court tour online.[77] Another young person said:

> "I tried to look up [the local] Crown Court but I couldn't find anything. You should be able to look into the courtroom you're going into and I wanted an update about the trial." (Jimbo, 13)

In interviews with parents of 172 children, 17 (10 per cent) had looked for information about being a witness on the Internet (one referred to the virtual court tour).

5.6 What they would change about the way they were supported

Across the group of young interviewees, 106 (58 per cent of 182) could not think of anything they would change about the support they were offered. However, 74 (41 per cent) suggested improvements. These included some who had pre-trial contact with a supporter and others who had not:

[77] www.cjsonline.gov.uk/walkthroughs/witness/launch_witness.html

- 54 (73 per cent of 74 who commented) would have liked (additional) support[78], including some who wanted to have been offered counselling.
- 33 (45 per cent) wanted more explanations about court and practical advice about special measures and choices. Several would have liked to speak to other young people who had already been a witness (one thought they would be "more honest').
- 14 (19 per cent) would have liked familiarisation visits to the court to be offered at a more convenient time and closer to the trial.

The need for face-to-face contact was stressed by many, including several in the upper age-range:

"I would've liked a face-to-face contact with someone to tell me what it's really like, not just by post or telephone." (Lisa, 16)

"I'd have liked someone to have come and explained things to me and to have gone to the court beforehand." (Mike, 17)

Even those who saw a supporter before trial sometimes wanted more assistance:

"I would've liked a bit more emotional help. She didn't really come enough. I'd have liked to see her every two or three weeks but she only came about once a month." (Debbie, 12)

"I felt unsupported before the trial. The young witness scheme was only in touch twice, once early on and once near the trial." (Kimberley*, 18)

"She [the young witness supporter] was really good but I had to wait for her to contact me. I would have liked a phone number for her." (Jasmin, 15)

"We would have liked earlier pro-active contact from [the young witness scheme] – not leaving it to us to call them." (Rachel*, 15)

"The supporters need to be with the kids earlier. We only had our first contact with the young witness service less than two weeks before the trial." (Parent of Sally, 15)

Some received support only on the day of trial:

"I didn't see anyone who helped until the day [of trial]. Nobody was bothered." (Jo, 8)

[78] Support organisations considered that 22 of 108 children (20 per cent) about whom they provided information to the project would have benefited from more preparation for the court experience.

"The young witness service ladies were fantastic and really helpful at the trial but we didn't know about this service before." (Matthew*, 15)

Others felt unsupported even at court:

"I didn't have contact with anyone before going to court and had no information. On the day I felt nobody was bothered really. I didn't know what to expect and I was really worried." (Terry, 14)

"Nobody at the court seemed to care how I felt, that I was pregnant and uncomfortable waiting around." (Lisa, 16)

"I wasn't offered any support. The only people who helped me were my family." (Charlotte, 17)

There were offers of help that were not followed through:

"Help was offered but not followed up. They never came or sent another letter out." (Suzie, 15)

"If you get offered something to help they should stick by it and not let you down." (Dee, 15)

Parents of 172 young witnesses were asked if there was other help and information they would have liked: 79 (46 per cent) said no, but others identified a range of unmet needs:

- Parents of 42 children (45 per cent of 93) would have liked advice on how to support their child.
- 28 (30 per cent) wanted more face-to-face contacts.
- 21 (23 per cent) would have liked more phone calls.
- 21 (22 per cent) wanted someone to call if they had questions.
- 14 (16 per cent) wanted support for other children in the family who were affected by the offence.
- Seven (8 per cent) wanted help with child care on the day of trial.
- 34 (37 per cent) would have liked other types of assistance, mostly more explanations and updates but also to meet the prosecutor, receive advice about Criminal Injuries Compensation and receive a better response when they reported witness intimidation.

"I had people to call but they didn't have answers." (Parent of Andrew, 12)

6 Refreshing the witness's memory

6.1 Arrangements for refreshing

Witnesses are entitled to see a copy of their statement before giving evidence. Viewing the video ahead of time in more informal surroundings helps some witnesses familiarise themselves with seeing their own image on the screen and makes it more likely that they will concentrate on giving evidence (section 5.50). It is the responsibility of the police to arrange for prosecution witnesses to read their statements or view video-recorded interviews (section 5.53). Many child witnesses may prefer to watch the video at least a day before the trial to help prepare them and reduce the stress of giving evidence on the day. The CPS recommends that the first viewing of the video-recording should not be on the morning of the trial, in order to avoid the child having to view the recording twice in one day. If the witness loses concentration or becomes distressed during the viewing, a break will be necessary (section 5.55). Information to be communicated to the CPS in sufficient time to enable the necessary action to be taken includes the child's views on viewing the video statement before the trial (section 5.80, *Achieving Best Evidence*, CJS, 2007).

The witness care officer will make the arrangements [for refreshing the witness's memory] with the police and the witness supporter. We recommend that children see the video before the day of trial, not on the day itself. The visit to the court is a good time to do it (p 14, *Children and young people*, CPS, 2006).

The prosecutor will assist victims at court to refresh their memory from their written or video statement (*Prosecutors' Pledge*, CPS, 2007).[79]

Policies describe overlapping responsibilities on this issue, which should be made clearer.

Of 172 witnesses who gave evidence:

- 88 (51 per cent) had their visually recorded statement used as their evidence-in-chief.
- 40 (45 per cent of 88) saw the recording before the day of trial for the purpose of memory refreshing (support organisations suggested that, in some areas, there was still confusion on the part of the police about whether refreshing using recordings was permitted).

[79] In 2008, after this study was completed, CPS produced a victims' leaflet explaining the Prosecutors' Pledge: *Are you a victim of crime? This leaflet sets out the support you can expect from prosecutors*.

CPS policy suggests that the familiarisation visit is "a good time" for children to view their recorded statements. Because these recordings can last for an hour or more, this puts pressure on time for the visit and would result in "information overload" for many children. Only six young people viewed their recordings on a pre-trial visit to the court and most others seemed to have viewed them at police premises.

Of 78 young people who made a written statement and gave evidence, 75 (96 per cent) were allowed to read their statement before trial, at court on the day.

"Reading my statement helped me remember the important bits." (Dane, 13)

Of 56 children who did not watch or read their statement before giving evidence, five (9 per cent) said they could not remember at court what they had told the police in interview.[80]

Advice about refreshing was sometimes incorrect or arrangements were not followed up. The parents of an eight year-old girl asked if she could see her visual recording before the trial but they were told she could not. A 14 year-old was told they were going to show her the recording beforehand but it did not happen.

In the survey of support organisations, 28 of 52 Witness Services and four of seven young witness schemes (in all, 54 per cent) routinely took part in the showing of visually recorded statements for the purpose of refreshing the witness's memory.[81] Fourteen Witness Services and two young witness schemes (in all, 27 per cent) were involved in letting witnesses read written statements for refreshing purposes.

6.2 Seeing the visually recorded statement for the first time

The majority of the 88 young witnesses whose visually recorded statement was used as their evidence-in-chief had difficulty in concentrating the first time they watched it:

- 39 (44 per cent of 88) said they could concentrate on it "OK" the first time they saw it.
- 27 (31 per cent) described the first viewing as upsetting.
- 49 (56 per cent) described the first viewing as funny or strange. Many were distracted by how much their appearance had changed since the recording was made.

[80] There was no correlation with adverse case outcomes as trials in which three of these children were involved resulted in a conviction.
[81] Supporters who assist in this way must be different from those accompanying children while giving evidence: Box 51(a), *Achieving Best Evidence*, 2007.

- 35 (73 per cent) of 48 who saw their video for the first time when it was played at trial described the viewing as upsetting, funny or strange or said that it was hard to concentrate on it.

One young person described "trembling and crying" while watching it for the first time and another said she was "watching but it was not going in". Other comments about watching the recording for the first time included:

"My heart was like, went to bits. I got a bit emotional and upset." (Kate, 18)

"I'd done the interview two years before. I just kept staring at how different I looked. I didn't really see it as me." (Carrie*, 18)

Nevertheless, those who saw their visually recorded statement in advance of trial usually found this helpful:

"I was cringing, but it puts you at ease, brings things back so you remember. I'm glad I saw it again at court." (Elena, 16)

"Seeing the video about a week before the trial made me remember a lot [there were 13 months between reporting incident and trial] that I had forgotten and it calmed me down a lot." (Joshua, 14)

6.3 Alerting the witness to editing

Witnesses need to be alerted to any editing so that they will not be surprised, suspicious or confused when the recording does not match precisely their recollection of the interview (section 5.54). Lawyers need to have seen video-recorded evidence in advance of the plea and case management hearing so that the judge can make decisions about admissibility, the need for editing and steps to refresh the witness's memory in advance of trial (section 6.3, *Achieving Best Evidence*, CJS, 2007).

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

- 35 (40 per cent of 88) said their visually recorded statement had been edited.
- 18 of these (51 per cent who were aware of an edit) did not see their video before trial for the purpose of memory refreshing.

Witnesses were aware that decisions about editing were not always made in advance of trial. For example, having waited for three days at court, on the fourth day the prosecution began showing the unedited video of 14 year-old girl. The recording was halted and she had to come back on a fifth day for an edited version to be shown.

7 Arrangements on the day of trial

Waiting times before giving evidence are dealt with above, in section 3.4.

7.1 Transport

Witness care officers also provide practical help for witnesses, such as help with transport to get to court (section 5.31, *Achieving Best Evidence*, CJS, 2007).[82]

Parents of 172 children were asked if they were offered transport for the trial:

- 54 (31 per cent of 172) were offered help with transport or a transport voucher.
- 27 (50 per cent of those to whom an offer was made) accepted and 27 (50 per cent) declined.
- 115 (67 per cent of 172) said that no offer of transport was made.
- 23 not offered transport (20 per cent of those who said no offer was made) would have liked help with transportation. Some mentioned that they were attending courts a considerable distance from their homes, not easily accessible by public transport.

"I would have liked help with getting to court because of my agoraphobia [fear of spaces where panic attacks may occur]." (Parent of Roberta, 16)

"After we were told that we had to be at court just three days before the trial, I told them that I had a disability and so they said that I would have to arrange a taxi. The day before the trial they found out that a local police officer had to attend so he gave us a lift." (Parent of Ted, 13)

7.2 Keeping young witnesses separate

It is important for the judge to be fully conversant with the facilities and staff available for the welfare of the child. The judge should also be aware of: the arrangements for the child to be delivered to and met at court (usually at a side entrance); arrangements for avoiding

[82] The Police/CPS Victim and Witness Care Delivery Unit advised that an offer of help with transport is usually made only if, during the witness care officer's questions, the witness indicates there may be a problem in getting to court. The Unit observed that the proportion reported here who received help with transport is likely to represent an improvement on the position prior to the introduction of WCUs.

confrontation between the child and any party to the proceedings; the number of escorts required if there is more than one child witness and the welfare provisions during breaks and after the evidence is concluded. Sometimes it is possible for stand-by arrangements to be made so that a child can be at a location close to the court and able to attend at short notice after a phone call (section 4.4.2, *Equal Treatment Bench Book*, Judicial Studies Board, 2005).

Witnesses perceive the court to be a place of safety where they play their role without physical discomfort (*Every Witness Matters: Components of 'Vision 2010'*, HMCS, October 2008).

Court staff will seek to ensure that the defendant, defence and prosecution witnesses and their respective families and supporters are kept separate throughout the court building. If you are a vulnerable or intimidated witness, court staff will seek to review entrance and exit routes to limit the opportunity for you to come into contact with the other parties (Standard 21). At court there should be separate waiting areas for prosecution and defence witnesses and their family and friends. If there is not a separate area available, other arrangements will be considered for you to wait separately from the other parties (Standard 23, *The Witness Charter*, CJS, 2008b).

Of 182 young witnesses who were waiting to give evidence, 12 (7 per cent) waited at a remote live link location and three (2 per cent) waited on standby away from the court. Of the remaining 167:

- 154 (92 per cent) were directed to a separate waiting room at the court.[83]
- 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.

The majority of courts do not have separate entrances for prosecution witnesses, but most can arrange for them to enter and leave the building at a different point from defendants.[84] For the majority of young people, advance planning enabled appropriate access arrangements to the court building:

- 22 (13 per cent of 170 waiting at the court or on standby) were met at the public entrance by an official escort (the majority in youth or magistrates' court).

[83] Courts have met a target that by the end of 2008 all Crown Courts and 90 per cent of magistrates' courts would have separate waiting facilities.
[84] See *Witness Security at Court* (undated) Home Office and Department for Constitutional Affairs: frontline.cjsonline.gov.uk/_includes/downloads/guidance/victims-and-witnesses/WITNESS_SECURITY_AT_COURT.pdf

- 67 (39 per cent) were brought into the building through at a rear or side entrance (the majority in the Crown Court).

Of the remaining young witnesses, 81 (48 per cent of 170) entered by the public entrance (the majority in youth or magistrates' court).

Seventy-six young witnesses (45 per cent of 170, excluding those who used the remote live link) saw the defendant in the court building or while entering or leaving:

> "All four defendants were standing there when we got into the court building. I freaked out and ran away. We were told to go to the witness room and had to go right past them. The next day, we were brought in a side entrance. The WCU hadn't told us that was an option even though we'd had lots of phone contact with them beforehand." (Katy, 17)
>
> "We had to walk past the defendant and his family to go into court, they were hissing and laughing at us." (Parent of Calum, 17)

Some young people were placed in the same waiting area as the defendant:

> "We were not kept apart. On the first day, we were in the same main area as all the defendants. We complained but we also saw them on the second day." (Carol, 15)
>
> "We saw the defendant and his family in the court building and in the entrance to court. I was left in a waiting area with all his family able to see me." (Charlotte, 17)
>
> "The Witness Service lady didn't know who the witnesses were or who the defendant was. When I'd given evidence she put me in a room with the defendant and her family. It was terrible. I was in there for about 15 minutes before she realised, with them all glaring at me. We kept seeing them in the court building and they were like a mob." (Jane, 15)

HM Inspectorate of Court Administration (2006) found that "For some witnesses, being shut away in a small room for a considerable length of time meant that their experience of coming to court was perceived to be worse for witnesses than for the defendants" (para 4.63). Even where witnesses were kept separate, many children felt that they were confined while the defendant had the run of the court building, a position made worse when there were long delays:

"I didn't like staying in a room for eight hours and nor being allowed to go out to the cafe in case I saw the defendant and he saw me." (Jason, 13)

"It was not fair. The defendant was at liberty and we were trapped." (Kenny, 15)

Parents also felt that their child was disadvantaged in this way compared to the defendant:

"We went in through the judges' entrance but we were told we couldn't go out during the day as they didn't open this entrance more than they have to. If parents went out for a cigarette, or for lunch, they lost their right to anonymity. Witness supporters put us under a lot of pressure about this, so we felt we were 'locked in'." (Parent of Simone, 13)

"As my son did not wish the defendant to see him, he had to be shut away in the witness care room for the duration of the trial which was all day. On several occasions I asked if I could take my son out for some fresh air, to be told 'No, the defendant is outside having a cigarette'. I found this totally unacceptable as my son was there to help as a witness." (Parent of Jason, 13)

Parents were asked to rate how well the court took account of their child's security, including not seeing the defendant:

- Parents of 53 children (33 per cent of 170 who attended court and for whom parental information was provided) said their child's security was handled "very well".
- 30 (19 per cent) thought it was handled "quite well".
- 56 (35 per cent) said it was handled "not well".

7.3 Managing witnesses while they are waiting

A trained child witness supporter, who knows the building and court procedures, will be there to help on the day of trial (p 14, *Children and young people, CPS, 2006*).

Training for young witness supporters is set out in the NSPCC handbook *Preparing young witnesses for court* (Plotnikoff and Woolfson, 1998) and National Standards annexed to *Achieving Best Evidence* (CJS, 2007). Training should also encompass induction standards for those working with children (both employed and those in the voluntary sector) required

by the Children's Workforce Development Council[85] and Local Safeguarding Children Board training requirements on safeguarding and promoting welfare (para 3.22, Department for Education and Skills, 2006).

Perceptions of support provided on the day of trial could depend on the degree of engagement between the supporter and the witness and the needs of the individual witness. Comments concerning the court-based Witness Service illustrated this range:

"The witness support kind of helped because it was a bit of a distraction but mostly it was just talking to others in the waiting room." (Ted, 13)

"The Witness Service was brilliant at both courts. One held my hand when I was angry and they kept mum up to date about the delays while we were waiting at court." (Elsie, 16)

"I'd built myself up for it. I was OK until 11.30 am. It should have started at 10.30 am. I went to pieces. I was really quiet for once. It hit me. I couldn't do anything. I was shaking a lot, very upset. They were fabulous then, trying to get information, whether I'd be done during the day. They told me what would happen. Even though I'd already been told that, it calmed me down. [The Witness Service supporter] knew what I wanted before I even knew. One step ahead of me. He knew I needed a drink, a tissue, he got them before I asked." (Lauren, 16)

Some witnesses and parents were unhappy about how things were managed while children were waiting to give evidence:

"We didn't go out for lunch because no one told us that the magistrates had gone to lunch, so I had nothing to eat all day, except the supporters gave us crisps." (Rachel*, 15)

Young witnesses who experienced long delays while waiting to give evidence were particularly concerned about being updated about case status (keeping witnesses informed is not solely the responsibility of supporters but witnesses expected them to have this information):

"The lady from the Witness Service at the court was very nice but she didn't know what was going on [to explain delays with the case]." (Jane, 15)

"I didn't like being left in the waiting room not knowing what's going on". (Martin, 15)

[85] See www.cwdcouncil.org.uk. The Council has issued new common induction standards for the children's workforce (effective September 2006), aiming to bring all 'new starters' in children's services up to the same level of knowledge and include essential principles and values when working with children; effective communication; child development; and safeguarding children.

"We waited all day in the waiting room. They just rang us in the waiting room downstairs. A lady came in and said 'You've got a phone call'. This said we can go now. Mum was annoyed that no one came down to say this." (Nick, 17)

Some were concerned about the lack of privacy in the waiting room. One witness was unhappy about being asked personal details by a supporter in front of other witnesses. She described the supporter as referring to previous young witnesses in a way this witness felt was "gossipy". Another young witness said:

"Someone in the waiting room read out our addresses – a witness for the other side was there so we were very unhappy about this." (Elsie, 16)

"There was another case for domestic violence [also in the waiting room]. The police and lawyers were talking openly about the cases." (Elena, 16)

Several witnesses commented on unsuccessful arrangements to separate them from other witnesses in the same case:

"I shouldn't have been able to see my friend who gave evidence before me. She was shaking from head to toe and sobbing." (Enid, 14)

"We didn't get much help, even on the day of trial. There was only one Witness Service person there to take care of all the witnesses. She was overloaded and had to leave the waiting room to be in the link room with each witness when they were giving evidence. There were six of us who all lived within a mile of each other but separate transport was arranged because we were not allowed to speak to each other. Then when we got to court, we were left alone together." (Don, 15)

"I think it's bad that after I gave evidence I sat in a room on my own not knowing what was going on, then when lunch time came I was able to have lunch with the other witnesses [who had not yet testified]. It didn't make sense." (Doreen, 14)

7.4 Waiting on standby

Where victims are witnesses, the court staff must, if appropriate, take phone numbers so the victim can leave the court precinct and be contacted when needed (para 8.7, *Victims' Code*, CJS, 2006).

"If you are a vulnerable or intimidated witness, you may be able to wait somewhere near to the court until the time you need to give evidence" (Standard 23, *The Witness Charter*, CJS, 2008b).

Of 182 interviewees, 10 (5 per cent) recalled being given the option of waiting on standby, eight of whom were Crown Court witnesses.[86] Three of the 10 chose to wait on call before attending the court to give evidence.

7.5 Waiting facilities

Court staff will seek to ensure that all witness waiting rooms are well maintained and clean; are secure; offer privacy, eg have blinds on any windows; have reading materials; contain suitable toys and reading matter for children of different ages; have a means of summoning assistance or making enquiries; and have a courtroom lay-out plan on display (Standard 23, *The Witness Charter*, CJS, 2008b).

HM Inspectorate of Court Administration (2006) acknowledges that parts of the court estate provide inadequate facilities for witnesses (para 1.2). The third Joint Inspectors' safeguarding children report from also commented on the considerable variation of facilities for children between court premises (para 163, HM Chief Inspector of Education, Children's Services and Skills et al, 2008). In this study, facilities were sometimes described as cramped, claustrophobic and inadequate, a view shared by Witness Service managers, witnesses and parents:

"Waiting rooms at our local courts are small, without natural light and poor ventilation so in the summer they are miserable. The buildings are only about six or seven years old. These inadequacies should have been dealt with at the planning stage." (Witness Service manager)

"There were a lot of young witnesses and parents in the waiting room and there was not enough room. There was nowhere to sit and it was so hot it was like a sauna." (Darren, 14)

"The waiting room was small with other witnesses there for other cases. There was one row of chairs for police officers, and behind us another family. There was nowhere private to go, only the toilet – one between all of us. My daughter was sobbing, she was really upset, and then I started crying; I felt awful. I felt like a hamster in a cage." (Parent of Alice, 13)

[86] The offer was made by seven Crown Courts and two youth or magistrates' courts.

Only 71 young witnesses (39 per cent of 182) reported that there were drinks, snacks or vending machines available:

> "There were no home comforts. We nearly starved to death. There were not enough chairs in the room for all the witnesses." (Kenny, 15)
>
> "There should have been a cup of tea or something from a machine – I was starving." (Mark, 17)
>
> "The young witnesses were not offered any refreshments apart from water. The cafe ran out of food at 12:30 pm and we were told after this time that we should have ordered. If we had known this, then we would have ordered appropriate food." (Parent of Jason, 13)

In 2006, HM Inspectorate of Court Administration noted that there were relatively few games and activities at court for older, teenage witnesses while they were waiting, and suggested that HM Courts Service consult with the Witness Service and young witness services about provision of activities ("Suggestions for further action" and para 4.15).

Of 182 young interviewees:

- 91 (50 per cent) said there were things already in the waiting room for them to do.
- 74 (41 per cent) said there was nothing to do while waiting, or at least nothing they considered age appropriate.
- 25 young people (14 per cent) had brought something with them in case they had to wait.

Lack of things to pass the time was made worse by long delays before giving evidence. Many of those criticising the lack of activities were teenagers:

> "We were stuck in a hot, stuffy, tiny waiting room for hours and we couldn't go out or we'd see them." (Elsie, 16)
>
> "We were sat in a room with white painted walls and a few chairs. There was nothing to do and we couldn't go out. It was dreadful – like watching paint dry." (Katy, 17)
>
> "In the first court we had table football. Something to do like that in the second court would have helped." (Nick, 17)

Some young people mentioned that waiting room equipment was broken:

> "The TV was not working and there was nothing for my age group to do." (Lisa, 16)

"The DVD didn't work. The TV didn't work. The X-Box didn't work. We were put in a tiny, tiny room with baby toys." (Nick, 17)

Some court waiting rooms did not have access to toilet facilities within the secure area:

"I saw him on the first day and on the second day when I went to the toilet." (Dylan, 15)

"We had to look outside [to avoid the defendant], even to go to the loo." (Kenny, 15)

Going through long corridors and a series of locked doors was mentioned as unpleasant by several young people, one likening it to "Fort Knox". At many courts, witnesses had some distance to go from the waiting room to the live link room and often had to cross public areas:

"Access to the TV link room involves going out into the street. Witnesses are therefore subject to outside interference." (Witness Service manager)

"At the trial, to get to the TV link room I had to go past glass doors where the defendants saw me. It freaked me out. They might as well have stuck me in there next to them. I thought it was the most peculiar set up." (Katy, 17)

"I had to go through the public area, outside and down a fire escape in order to reach the TV link room." (Don, 15. This was confirmed by the Witness Service)

"There was a delay because the lady who took me to the TV link room couldn't find the room and we ended up in the kitchen." (Ted, 13)

There were also problems with live link rooms and the lack of sound-proofing (a problem highlighted by HM Inspectorate of Court Administration [2006], which recommended this be addressed in a revised design guide [para 4.22]):

"They should move the room for the witness so they don't see the defendant, it looks over the main entrance hall and there should be more comfortable chairs. In the TV link room, the usher locked the door at first but someone knocked and interrupted and then she forgot and another person came in, he thought it was the toilet which was next door. It was noisy being next to the toilet and because it was beside a main road, the cars also made a noise. It put me off when I was giving answers. It would be better somewhere else." (Jeremy, 14)

"The TV link room wasn't sound proof, so I could hear the questioning from the waiting room." (Parent of Diana, 7)

7.6 Introduction to the prosecutor

CPS must ensure that, where circumstances permit, prosecutors or other CPS representatives introduce themselves to victims at court, answer their questions about court procedures, indicate how long they will have to wait before giving evidence and explain reasons for any delays (sections 7.9-10, *Victims' Code*, CJS, 2006).

The *Bar Code of Conduct* allows legal representatives to introduce themselves to witnesses and assist with procedural questions provided the evidence is not discussed.[87] It is CPS policy under the Prosecutor's Pledge for the CPS to meet witnesses (including children) who are potentially entitled to Special Measures when they first attend court. The *Victims' Code* places an obligation on the CPS to ensure, where circumstances permit, that prosecutors (or, if prosecutors are unavailable, other CPS representatives) introduce themselves to victims at court. This is applied to all witnesses in *The Witness Charter* (CJS, 2008b). It is the policy of the Law Society and the Criminal Bar Association that the defence legal representative should meet defence witnesses. Supporters should ask witnesses whether they wish to meet their legal representative prior to giving their evidence (section 5.67). Legal representatives have a responsibility, when dealing with a witness who is nervous, vulnerable or apparently the victim of criminal or similar conduct, to ensure that those facing unfamiliar court procedures are put at their ease as much as possible. Meeting with the legal representative who is to call the witness to give evidence-in-chief in a calm environment may be an effective way of preparing a witness (section 6.13). Information to be communicated to the CPS in sufficient time to enable the necessary action to be taken includes the child's views about meeting the prosecution legal representative (section 5.80, *Achieving Best Evidence*, CJS, 2007).

A representative of the CPS will be at court to make sure young witnesses speak to the prosecution advocate before trial. The advocate will be able to answer questions about what will happen during the trial, but must not discuss the evidence. If children give their evidence by live link from another building, we will make sure that they speak to the prosecution advocate on the link before the trial starts (p 16, *Children and young people*, CPS, 2006).

The prosecutor can answer (the victim's) questions on court procedure and processes (*Prosecutors' Pledge*, CPS, 2007).

[87] There is no longer a rule preventing a barrister from having contact with a witness whom he may examine in chief, with a view to introducing himself, explaining court procedure (and in particular the procedure for giving evidence), and answering any questions on procedure which the witness may have: paras. 6.1.3-4, *Written Standards for the Conduct of Professional Work*, General Council of the Bar, 2004.

Prosecuting advocates have a responsibility to consult and liaise with victims and witnesses at all stages of the court process to ensure, in conjunction with the Witness Service, CPS and court staff, that they are provided with appropriate information and support, and that their needs are taken account of when arranging the business of the court. In particular, prosecuting advocates have a responsibility to ensure that those who are unfamiliar with courts are put at ease as much as possible, especially witnesses who are nervous, or vulnerable, or intimidated or are the victims of crime. Where practical, prosecuting advocates should introduce themselves and offer an explanation of the court process, in particular the process relevant to that hearing (*A Standard for Communication between Victims, Witnesses and the Prosecuting Advocate*, CPS, 2006).

If you attend court as a witness, the relevant lawyer will, where practicable, seek to introduce themselves to you on the day and will seek to answer any practical questions you have (Standard 22, *The Witness Charter*, CJS, 2008b).

Prosecutors' responsibilities extend beyond introducing themselves to ensuring (along with other criminal justice personnel) that witnesses understand their role, have the opportunity to ask questions and are put at ease as much as possible.

Of 172 young people who gave evidence:

- 118 (69 per cent) were introduced to the prosecution lawyer before court. Six of these used a remote link.
- 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.
- One young witness (for whom an intermediary was appointed) met the prosecutor before the trial at her school where a remote link was to be installed.

However, some young witnesses did not meet the prosecutor:

"I would have liked to have met the prosecutor and the judge just to say 'hello'." (Helen, 16)

"I am an ex-prosecutor, so I know about the problems that can arise at court but the prosecutor did not come to see the witnesses." (Parent of Jon, 14)

Explanations from the prosecutor, when they occurred, were greatly appreciated:

"There was time for the prosecutor to answer our questions and explain things because of the delay." (Sean, 16)

"The prosecutor was helpful because he explained things and asked if I had questions." (Robin, 14)

Other young people met the prosecutor but felt he or she was abrupt or disinterested (one child said "Make sure the prosecutor wants to be there"):

"The prosecutor came in but he did not talk directly to me." (Jon, 14)

"He just came in and said his name. He didn't say 'Hi'. He didn't ask if I'm alright, or how I was feeling. It's hard to say if he was polite or not because he looked like he couldn't be bothered." (Lauren, 16)

"The prosecution lawyer did not introduce himself properly and was very off-hand and unhelpful." (Mandy, 17)

Some parents also felt the prosecutor was off-hand in speaking to their child:

"The prosecuting lawyer came in and said 'she's first, she's second and he's third' and then left. I tried to talk to him but he walked out. He didn't say his name." (Parent of Alice, 13)

Ten young witnesses (6 per cent of 172 who gave evidence) were introduced to the defence lawyer (six in Crown Court and four in the youth or magistrates' court):

"When I met the defence lawyer in the waiting room she was nice to me but when I gave evidence she was horrible and made me cry. I felt she cheated me into trusting her." (Maureen, 17)

"The lawyers came in to see us but it was really weird [there were four defendants and therefore five lawyers, including the prosecutor]. One asked which witness I was. She was for the guy I gave the statement about. I felt she was sizing me up. We'd already been told she was a real Rottweiler." (Katy, 17)

Some others wanted to be introduced to defence advocates:

"It would have been good to have been introduced. When someone is going against you, they're not a very nice person. It is their job but they're being quite mean so it would be good to see them normal." (Andrew, 12)

7.7 Introduction to the judiciary

An increasing number of judges, accompanied by the prosecution and defence legal representatives, meet young witnesses before they give evidence. Experience suggests that this can assist in demystifying the court process. Putting young witnesses more at ease helps them to give their best evidence (section 5.68). A young witness may benefit from meeting the judge or magistrates before the case commences. Some judges are prepared to do this provided that they are satisfied that this will not create an impression of bias in favour of the witness, as their experience suggests that this can assist in demystifying the court process. However, it is essential that the prosecution and defence legal representatives should be aware of the meeting and have the right to attend if they so wish in order to avoid any subsequent legal challenges (section 6.12, *Achieving Best Evidence*, CJS, 2007).

We will try to arrange for the children to meet the magistrates or the judge on the day of trial (p 16, *Children and young people*, CPS, 2006).

Of 172 young people who gave evidence, only 14 (8 per cent) were introduced to the judge, district judge or magistrates. Where this happened, it was greatly appreciated:

> "I even met the judge before it started. She was very nice to me." (Leah, 16)
>
> "The judge was proper lovely – he was so kind." (Kate, 18)

Some Witness Service managers saw benefits to children's evidence arising from introductions:

> "Children and young people give better evidence if judges and barristers take the time and trouble to try to relate to them and make them feel at ease."
>
> "Judges should make more of an effort to meet young witnesses. It has been done at my court numerous times and it's invaluable."

8 The trial

8.1 How young witnesses gave evidence

Children in need of special protection (ie in sex offence cases and those involving violence, kidnapping or neglect) must give evidence by visually recorded evidence and live link: exceptions are permitted only in the interests of justice (sections 21 and 22, Youth Justice and Criminal Evidence Act, 1999).

Investigators should consider whether the investigation and the needs of the child might be better served by obtaining a written statement (section 2.9, *Achieving Best Evidence*, CJS, 2007).

All child witnesses are able to make a statement in the form of a video-recorded interview. The person taking it will ensure that the recording is of sufficient quality for it to be used in court as evidence if necessary (Standard 5, *The Witness Charter*, CJS, 2008b).

A visually recorded statement used as children's evidence-in-chief permits courts to see the child's account close to the time of the allegation and relieves the child of repeating the details in direct examination at trial. In this sample:

- 94 (55 per cent of 172 young witnesses who gave evidence) made a visually recorded statement.
- For 88 (95 per cent of those who made a recording), it was used as their evidence-in-chief at trial.[88]
- 75 of the 88 (85 per cent) said playing the recording as their evidence-in-chief was helpful.

Recordings were not used in some instances because of equipment failure but they were also rejected on the day of trial due to poor technical quality or failure to review content which was ruled inadmissible only after the recording began to be played to the court.

Research has found that children giving evidence by live link were rated as more resistant to leading questions and were more consistent and less tearful (Davies and Noon, 1991). Live

[88] In England and Wales, of those young witnesses who gave evidence once, the recording was played for 33 per cent in magistrates' court, 17 per cent in the youth court and 82 per cent in Crown Court.

link use has also been found to promote more accurate testimony than evidence in the courtroom (Goodman et al, 1998). In this study, young witnesses gave evidence as follows:

- 129 (75 per cent) used a live link[89], of whom 12 (7 per cent) used a remote link away from the court building.
- 43 (25 per cent) gave evidence in the courtroom[90], 20 (12 per cent) in open court (including three who gave evidence in open court at a trial in the absence of the defendant) and 23 (13 per cent) with a screen.[91]

Although all 182 witnesses were under 17 when offences were reported, 26 (14 per cent) were aged 17 and over by the time of trial:

- 11 (42 per cent of 26) had made a visually recorded interview. Eight gave evidence by live link at trial (one used a remote link), two gave evidence in court (one with a screen) and one did not give evidence.
- 15 made written statements. Two were permitted to give evidence by live link and two gave evidence in the courtroom with a screen. The rest gave evidence in open court, including a boy who was three days past his 17th birthday and who had wanted special measures because he felt intimidated by the defendant, a near neighbour.

Section 21 of the Youth Justice and Criminal Act 1999 sets out the "primary rule" giving courts no discretion in directing that children in need of special protection must give evidence by visually recorded statement (if one exists) and by live link, but section 20(2) allows courts to vary or discharge an order for the live link and section 24(3) allows courts to permit witnesses to give evidence in another way "in the interests of justice".[92] Judicial Studies Board guidance relating to section 21 states that "The child is able to inform the court that they do not wish this provision to apply to them" (section 4.4.3, *Equal Treatment Bench Book*, 2005). The "primary rule" was not always applied to the witnesses in this category who gave evidence, although the study could not tell whether special measures orders had been varied in the interests of justice:

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[89] In England and Wales, of those young witnesses giving evidence once, the TV link was used by 67 per cent of those in magistrates' court, 69 per cent of those in the youth court and 82 per cent in Crown Court.
[90] In England and Wales, of those young witnesses giving evidence once, 13 per cent who gave evidence in magistrates' court were screened, as were 11 per cent in youth court and 18 per cent in Crown Court; 19 per cent of those who gave evidence in magistrates' court; and 19 per cent who testified in youth court did so in open court.
[91] In this study, 88 per cent used a TV link or were screened in court. Cooper and Roberts (2005) found that special measures applications were made in 87 per cent of young witness cases (p 76, table 3B).
[92] Hoyano and Keenan (2007) describe as 'unfortunate' the Act's failure to elaborate on this phrase, noting that In the Australian Northern Territory, courts can vary statutory arrangements for vulnerable witnesses in the interests of justice, having regard to minimising the harm and enhancing the effectiveness of the witness's evidence: Evidence Act (Northern Territory) s21A(2b), quoted at p. 632.

- 89 (59 per cent of 151 young witnesses "in need of special protection") made a visually recorded statement.[93]
- 62 (41 per cent) made a written statement.
- 116 (77 per cent) used the live link, either at court or remotely.
- 35 (23 per cent) testified in the courtroom, 22 (15 per cent) screened from the defendant and 13 (9 per cent) in open court.

The principal special measures were least used for young witnesses in the Southeast and London, compared with other court regions (see Appendix 3):

- 43 per cent made a visually recorded statement, compared with 68 per cent in the Northwest.
- 60 per cent of those who gave evidence did so over the TV link, compared with 91 per cent in the Northwest.

8.1.1 Clearing the court

A special measures direction may provide for exclusion from the courtroom of people who do not need to be present while a witness gives evidence in sexual offence cases or where intimidation has occurred or may be attempted (Section 25, Youth Justice and Criminal Evidence Act 1999).

The court's ability to exclude the public pre-dated the 1999 Act but was seldom used, unlike in Scotland (Richards et al, 2008 and Plotnikoff and Woolfson, 2001). Complaints about courts' reluctance to hear children's evidence in relative privacy in England and Wales have been repeated over a 70 year period.[94] The statutory provision does not appear to have changed practice. Leaving aside 37 young witnesses who gave evidence in the youth court from which the public is excluded, in all, 56 young witnesses (41 per cent of 135) appear to have been eligible for the section 25 provision either because they gave evidence concerning sexual offences and/or because the WCU reported setting the intimidation flag in relation to the witness on its database. The public was excluded from the courtroom for only one witness in the study, a 15 year-old girl who gave evidence in a sex offence case in court behind a screen. Pressures created by the presence of the defendant's family and friends were

[93] Hamlyn et al (2004) found that only 42 per cent of children under 17 were video interviewed, notwithstanding that 49 per cent of the sample was subject to the primary rule (pp. xiii, 10, 66, 70).
[94] For example, the Departmental Committee in 1925 (Cmnd 2561, para 64); the British Medical Association and the Magistrates' Association jointly in 1946; and the Magistrates' Association in 1962. Quoted at p 114, Spencer and Flin, 1993.

mentioned by many witnesses and parents. The presence of members of the public could also be a pressure. (Parents could be particularly sensitive about those permitted to be present when their child gave evidence when they were themselves excluded from the courtroom.) Although youth courts are closed to the public, courts sometimes permit observers. A witness in a youth court trial commented:

> "We were told it would be a closed court but there were a dozen students in there. They should have let me know." (Andrew, 12)

8.2 Young people's views about special measures

Where a vulnerable or intimidated victim may be called as a witness and may be eligible for special measures, the police must explain these provisions and record any views the victim expresses about applying for special measures (section 5.8, *Victims' Code,* CJS, 2006).

At the plea and directions hearing, any views or preference expressed by the child should be taken into account (section 4.4.2, *Equal Treatment Bench Book,* Judicial Studies Board, 2005).

The police must explain to potentially vulnerable or intimidated victims about special measures. At the earliest stage the police and the prosecutor should explain the "menu" of available special measures and their advantages and disadvantages (section 5.10). Young witnesses are automatically eligible for consideration for special measures. Witnesses can then express an informed view on their preference for particular measures, which will be included in any application[95] (section 5.32). The UN Convention on the Rights of the Child[96] and Directives from the European Union emphasise the need for adults and organisations, when making decisions that affect children, to consider their best interests and their views. Reports to the CPS should always include clear information about the wishes of the child – and those of their parents or carers – about going to court. The CPS may in any event need to seek additional information from the joint investigating team (section 5.73). Lawyers should have full instructions about the witness before the plea and case management hearing (section 6.2). New information may become available after the plea and case management hearing and

[95] Special measures application forms have boxes to record witness views and any material change of circumstances relied upon to support the application.

[96] States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child: Article 12, *UN Convention on the Rights of the Child,* 1989. The Convention is an international human rights treaty setting out more than 40 substantive rights for young people aged 17 and under. The UK signed the Convention on 19 April 1990, ratified it on 16 December 1991 and it came into force on 15 January 1992.

before the trial. A witness's views may also change over time. Steps taken by the court to enable witnesses to give their best evidence may have to be reassessed in the light of such changes and lawyers have a responsibility to keep the court informed. Procedures must be in place for channelling relevant information to legal representatives (section 6.4, *Achieving Best Evidence*, CJS, 2007).

We think it is best for children to use the live link [but] if there is a good reason why they do not want to, we can ask the magistrates or judge to allow them to give their evidence in the courtroom behind a screen (p 16). Children's views are important, but in the end we have to make the final decision in cases. We listen carefully, but we cannot promise to do what children want all the time (pp 8-9, *Children and young people*, CPS, 2006).

If you are a prosecution witness, the police will initially identify whether you may be a vulnerable or intimidated witness and will seek your views on measures that might help you (Standard 4). The police, WCU, or the prosecution or defence lawyer will explain which special measures may be available to you and ask which, if any of them, you would like to take (Standard 11, *The Witness Charter*, CJS, 2008b).

Raitt observes that "unless special measures are consistently and wholeheartedly adopted with the full involvement of children, they cannot capture and capitalize upon children's resilience. Only research with children, and with their interests at the forefront, will be able to find out directly from them what it is they need" (2007).

The Youth Justice and Criminal Evidence Act, in trying to ensure greater certainly for young witnesses, has reduced the element of witness choice about how to give evidence (this issue is explored in the Office for Criminal Justice Reform's consultation paper, *Improving the Criminal Trial Process for Young Witness*, 2007). Being able to exercise a choice is important, even where young witnesses wish to use the live link. (Only 17 children – 13 per cent of 129 who gave evidence by live link – had practised on it at a pre-trial visit). Research in Australia found that young witnesses with some choice over how they gave evidence were assessed as giving more effective testimony (Cashmore and De Haas, 1992).

The project asked young people who gave evidence how they felt about the method used:

- 141 (82 per cent of 172) were content with arrangements for them to give evidence.
- 67 of these (39 per cent of 172) would have been unwilling to give evidence any other way.

"It was scary but I was in the secret room which made me feel more comfortable in myself." (Samantha*, 16)

Many young people said they had no choice about how they gave evidence. Some were unaware about options, particularly screens.

"If someone had explained what was available, I might have liked to have had it." (Melanie, 14)

Twenty-six young people (15 per cent of 172) did not give evidence the way they wanted[97]:

- 12 (9 per cent of 129 who used the live link) would have preferred to give evidence in the courtroom.
- Ten of these wanted to be screened so as not to be seen by the defendant. Two wanted to testify in open court.

Reasons included not wanting to be seen by the defendant over the link, wanting to confront the defendant in court and live link rooms which were cramped and unpleasant to spend any time in. Those who did not like the live link, having used it, included witnesses of all ages:

"I didn't like the TV link room. I had to sit up on two cushions and I wasn't allowed to take my toy in. I didn't like it that there was a man watching the camera." (Petra*, 7)

"I would have rather been in court so I could have looked him in the eye and shown him that I wasn't scared." (Joan, 10)

"I would have preferred to give evidence in the courtroom. They didn't give me a choice. We told the witness care officer that we wanted to go behind a screen but he said that it had to be a video link. At court they said you have to go in the TV link room because we have already set it up." (Charlie, 12)

"I wanted to go in the court. Why? I just did. I was not nervous or frightened. I told people. They said I can't because I'm not 17. I was only two months off. I was being spoken to like I'm a ten-year-old. It was frustrating." (Jess, 16)

[97] HM CPS Inspectorate recommended that the CPS consider a monitoring exercise relating to the use of special measures for young witnesses and the undertaking of meetings to determine which special measures are appropriate for the individual and in light of the quality of any video recorded interviews: para 8.5, *Safeguarding Children* (CPS, 2008).

Fourteen of 35 young witnesses who testified in the courtroom (40 per cent) were unhappy with this:

- 13 (six of whom were screened) wanted to use the live link.[98]
- One gave evidence in court standing behind a screen and wanted to be seated.

Those who were unhappy about being in the courtroom were concerned not just about proximity to the defendant, even if a screen was used, but also their visibility to members of the public and the defendant's supporters. One described this as like "going into the lion's den". At least two felt pressured into testifying in the courtroom because they had been advised by the prosecutor that "the jury was more likely to believe them".

There is no research evidence to support this perception. Studies in the USA (American Bar Association, 2002) and Australia (Joudo and Taylor, 2005) found no significant difference in conviction rates when witnesses used live links, as did young witness studies in England (for example, Davies and Noon, 1991) and Scotland (Murray, 1995). Hoyano and Keenan (2007), in their extensive review of young witness research, conclude that "It is probably impossible to resolve the issue of the impact of technology on English juries… [but] what is beyond dispute is that live link is the only means to enable many vulnerable witnesses to testify, and it helps many to provide more complete and accurate evidence" (p 644). Other benefits of live link use include children being less likely to refuse to testify (Goodman et al, 1998); reducing pre-trial anxiety, so that the live link "served a protective function for children even before they testified" (Goodman et al, 1992); and reducing suggestibility in younger children (Doherty-Sneddon and McCauley, 2000). However, the type of technology employed may make a difference to outcomes. In an unpublished exercise, the resident judge of Liverpool Crown Court monitored the outcomes of vulnerable witness trials at his court between January 2005 and November 2006: 49 per cent of young witness trials resulted in convictions where the jury watched children's testimony on large plasma screens, as compared with 36 per cent where the jury saw it on out-of-date, small TV screens (the overall conviction rate at the court for this period was 22 per cent).[99]

In this study, some young witnesses were successful in getting arrangements changed, achieved in the face of conflicting advice and decisions:

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[98] Eight young people gave evidence in the courtroom because the TV link was not working. Four for whom screens had been granted gave evidence in open court because screens were not available on the day of trial.
[99] Email to the authors from His Honour Judge Globe QC, 23 June 2008.

"When I practised on the link I didn't like it. I wouldn't have known who was looking at me. I said I wanted a screen, but I got even more anxious when I got a letter saying I'd be using the TV link. In the end I didn't have to." (Rachel, 14)

"I was told there was no TV link available but I said I wouldn't do it at the appeal if I had to go into court so we all moved to another court that had a TV link. It wasn't the least bit organised – the Brownies could have done this better." (Katy, 17)

"Well, I was going to do it over the TV link and I said that I wanted to go into the court. The police liaison officer said that I wouldn't be able to do this but we spoke to the barrister and it was OK." (Dawn, 14)

Twelve young witnesses (7 per cent) gave evidence using a remote link away from the court building.[100] Two others expected to do so and waited there for one day but on the second day it was not available and they had to go to the court to give evidence. One child who used the remote link wanted to be at the court building because he would have like to meet the defence lawyer. Some other children and parents who gave evidence at court endorsed the idea of giving evidence from another location:

"I wanted to be somewhere else. The TV link room at court looked like a closet with no window. When it didn't work, I was quite glad to get out of there." (Dave, 12)

"A remote link should be available at every court in the country." (Parent of Scarlet, 16)

A seven year-old girl was the subject of a special measures application to use a remote link which was refused by the trial judge. Her mother said:

"The court has spent so much on that [remote] link, why don't they let the kids use it instead of cramming us all in at the court? All kids should be able to use it. Court is so daunting." (Parent of Diana, 7)

8.2.1 Documenting children's views about special measures

The best way to obtain an informed opinion from the child about special measures is following a demonstration of the live link and screens on a court visit before trial. However, such visits, if they occur, often take place after applications are due to be made to the court.

[100] Seven remote TV link sites were at different courts or an adjacent court building from the trial; two were in police stations (one in the custody suite); two were NSPCC offices; and one involved mobile equipment temporarily installed in a school annex.

Criminal justice personnel may therefore discuss use of the live link and other special measures with parents in order to inform special measures applications and then change the application if necessary once the child has visited the court before trial.

Project referral forms indicated that the child's views about special measures were included in the "reasons" section of the application for only 35 children (19 per cent of 182 interviewees).

Of 148 young interviewees referred by WCUs and police officers and where a parent interview was also conducted:

- Parents of 76 children (51 per cent of 148) recalled being asked about their child's views about special measures, including use of the live link.
- WCUs and police officers said they were made aware of the views of 34 children (23 per cent) about special measures. For 17 of these children, parents recalled being asked this question.

Only two young people were assessed by an intermediary (see section 9.12 below). Interviews suggested that criminal justice personnel had not discussed this special measure with other children or parents in areas of England and Wales where the scheme was available.

8.2.2 Wigs and gowns

Information to be communicated to the CPS in sufficient time to enable the necessary action to be taken includes the child's views on the wearing of wigs and gowns by judges and legal representatives *(section 5.80, Achieving Best Evidence*, CJS, 2007*).*

The formal legal dress of judges and barristers can be perceived as intimidating. Under section 26, Youth Justice and Criminal Evidence Act, 1999 the judge may dispense with the wearing of wigs and gowns while the witness gives evidence. Of 67 young people who gave evidence in the Crown Court:

- 38 (57 per cent of 67) were asked if they would like wigs and gowns removed
- of these, 24 wanted wigs and gowns to be worn, 11 wanted them removed and three did not mind or could not answer the question.

"I wanted wigs off because they are really scary." (Lucy, 14)

8.3 Being seen by the defendant over the live link

The pre-trial visit may cover [inter alia] a demonstration of any special measures applied for and/or granted, for example practising on the live link and explaining who will be able to see them in the courtroom (section 5.48, *Achieving Best Evidence*, CJS, 2007).

Prosecutors will address the specific needs of victims and where justified seek to protect their identity by making an appropriate application to the court (*Prosecutors' Pledge*, CPS, 2007).

Witnesses should come to court fully informed about their role and the experience – there are no shocks at court (*Every Witness Matters: Components of 'Vision 2010'*, HMCS, October 2008).

This study found that most young witnesses were relieved to be told that they did not need to go into court but some were shocked to discover that the defendant could see them over the live ink. Of 129 young witnesses who gave evidence this way, 123 were asked whether they knew the defendant could see them (six were not asked this question due to their youth or vulnerability):

- 100 (81 per cent of 123) knew the defendant could see them. Of these 100, 39 (39 per cent) were told this at a pre-trial familiarisation visit, 40 (40 per cent) only found out on the day of trial and the remainder could not say when they discovered this. Of the 40 who found out at the trial, only four had made a pre-trial visit to the court.
- 23 (19 per cent) did not know the defendant could see them, one of whom said he was told the defendant would not be able to see him over the link.
- 33 (27 per cent) were unhappy about the defendant being able to see them over the link.
- For four of these witnesses, the defendant's TV screen was turned off or covered to prevent the defendant seeing them (for at least one young witness, this was decided only on the day of trial).

Many of the 33 young witnesses who were unhappy about the defendant seeing them were concerned about being recognised in future, particularly those who had felt intimidated before the trial:

> "I felt let down. I said I would give evidence and I wanted screens so he couldn't see my face or recognise me again but I had to do it on the TV link and he saw my face. He saw me twice because the prosecuting lawyer took me to have a look at the court and he was sat outside." (Richard, 16)

"I would have liked more practical information beforehand... like about the defendant seeing me. Maybe I would have chosen the screen so he could not see me but I did not know he would see me until the trial." (Jerry, 16)

One young witness had been told at investigative interview that her face would be disguised on screen when her interview was played and when she gave evidence at court:

"At the first video interview we took our school ties and jumpers off, so he wouldn't know where we came from. They said they'd blur our faces. But they said different things to [the other witness's] mum – that they couldn't do this; to my mum they said they could." (Gemma, 16)

8.4 Seeing the defendant on the live link

The underlying principle of the live link is to ensure that the witness does not see the defendant, but 15 young witnesses (12 per cent of 129 who used the link) mentioned spontaneously that they saw the defendant on their TV screen. In the survey of support organisations, some managers confirmed this was a problem. Sometimes this occurred because camera angles were only adjusted after children were seated in the live link room, resulting in them seeing the defendant:

"They had trouble getting it [the camera] on the right person. When it first came on I could see him [the defendant]." (Elena, 16)

Only two of these 15 witnesses said the person sitting with them in the live link room brought the view of the defendant on the witness's screen to the attention of the court (this responsibility should be explicit in guidance):

"I could see one of the defendants on the TV link. He was playing with his phone – was he recording what I said? He was right behind his lawyer and passing notes to him. The lady sitting with me could see him too. She told the usher and he was moved." (Elsie, 16)

"I saw the defendants on the TV link in the magistrates' court and at the Crown Court. The second time, the supporter complained and he was moved." (Carol, 15)

8.5 Not being able to see the questioner

In addition to ensuring that the witness does not see the defendant on screen, appropriate use of live links requires vigilance to ensure the witness understands what is going on and that the questioner can always be seen full face on the witness's TV screen:

> "The faces on the screen were cut off, so often I could only see half a face which put me off a bit." (Jeremy, 14)

A girl with hearing problems, who relied on being able to see the questioner's mouth, said:

> "He kept looking down and I couldn't see his face properly or his mouth. I was moving round trying to get a better view which was silly – why was I doing that? I was the one on the TV link." (Lorraine, 14)

8.6 Equipment problems and delays

The judge should check at an early stage that all directions are in place, all special needs are catered for, that the equipment is working and that no last-minute alteration to the timetable is needed (section 4.4.2, *Equal Treatment Bench Book*, Judicial Studies Board, 2005).

Court Witness Liaison Officer duties may include ensuring that the video and TV link equipment is set up and working effectively (section 5.65, *Achieving Best Evidence*, CJS, 2007).

Measures requiring liaison include ensuring that all equipment is working and that sound quality is good (p 12, *Every Witness Matters: Employee Handbook*, HMCS, 2005).

If the court has granted an application for one or more special measures to help you give evidence, court staff will ensure the special measure is available and provide any assistance as required (Standard 26, *The Witness Charter*, CJS, 2008b).

Interviews revealed an unacceptably high incidence of equipment problems. Of 172 young people who gave evidence:

- 68 (40 per cent) described a problem or delay because of faulty live links, difficulties in playing visually recorded statements or the lack of screens.
- These included difficulties experienced by 62 young witnesses using a live link (48 per cent of 129 those giving evidence this way).

- Problems were experienced by six giving evidence in the courtroom, including four who gave evidence in open court because no screens were available, even though special measures applications had been granted.

Some of those giving evidence at trial in magistrates' or youth court and again on appeal at Crown Court experienced technology problems on both occasions.

Poor or no live link sound was the most common problem.[101] Eight who gave evidence in the courtroom did so because the link was not working.

> "I did it through the TV link in the magistrates' court and that was easier. On the day of the Crown Court [appeal], the TV link wasn't working. I got really upset because I had to go into the courtroom". (Karen, 14)

Difficulties in playing visually recorded interviews were also frequent (at least one young witness was given a transcript to read because the sound was so poor):

> "When they started the video sometimes it flickered, so they had to start again a couple of times from the beginning." (Ellen, 8)
>
> "On the fourth day of the trial, the final 12 minutes of my video was played to the jury but not to us on the remote link, so it had to be replayed." (Lorraine, 14)
>
> "Everyone in the court could see the video of my evidence but we couldn't see it in the TV link room. We were trying to attract their attention but it took about ten minutes to do this. Also, I couldn't see the judge properly when he came on the TV." (Sally, 15)
>
> "When my video was being played to the court I could hear people in the court whispering and tapping their pens because they did not turn their microphones off." (Darren, 14)
>
> "I had to go into the courtroom to watch my video because it wasn't working in the TV link room. I was sitting with boards [screens] between me and the defendants but I could still hear them on the other side, sniggering." (Elsie, 16)

Two children mentioned that the wrong interview was played:

[101] It would be useful to survey jurors about the ease of seeing and hearing visual evidence, both live and recorded. It is the authors' observation that jurors can often be seen straining to hear and sometimes to see the old-style live link screens in the courtroom.

"It was a major mess up: they started playing two other witnesses' videos to me before they got to mine. I was told later this was the wrong version anyway as mine had been edited but they played the full version to the court." (Esther, 16)

A witness supporter observed a girl of ten when her interview was played to the court:

"The recording kept stopping and faltering. This was very distracting for the witness because it kept stopping at points where it made her look strange because she had her eyes half-closed or a strange expression on her face. I think this made it even more difficult for her."

Delays caused by technical problems ranged from a few minutes to many hours and in several instances meant that children's evidence was continued to another day:

"A whole day was lost when there were difficulties in getting my video to play, then with its quality [her face was not clear and the sound was poor]. The judge would not let it be played to the jury: they left the TV link on and I heard what the judge said." (Carrie*, 18)

"I don't know what went wrong with the TV link but we didn't start on time. Why didn't they sort it out before we arrived?" (Rita, 16)

Some comments indicated that equipment failure had become an accepted fact of life at many courts. One child was told that a magistrates' court link had not worked for over a year.

"I was expecting to give evidence on TV link but it didn't work and they didn't seem to care. They shoved me around, like 'Get into court behind screens then'. I could see the reflection of the defendant in the blank monitor. This made me worried but I felt I couldn't tell anyone this." (Hannah, 15)

"The first time I was there [at court] for two days – the video link was broken at the time. The excuse was 'It's not our fault. Come back tomorrow'. The second time [six weeks later] I was there, the first day it broke. The second day they were fixing it. The third day [they said] you may as well go behind the curtain." (Nick, 17)

Even when live link equipment was working, there could be other problems. Discussions in the courtroom often meant the child's screen was turned off in the live link room, but this was not always preceded by an explanation:

"I didn't like it because the screen kept going blank and they didn't explain why." (Vera*, 11)

8.7 Providing emotional support to children while they give evidence

Where children appear as witnesses, it is vital that they understand that they can give their evidence with someone near to support them (section 4.1.3). Issues for the judge may include deciding who should accompany the child when giving evidence. This may be a trained usher, a social worker, Witness Service personnel or other third party known to the child. Where necessary that person should receive proper instructions as to the need to stay with the child throughout, not to interrupt or intervene during the evidence without good cause, not to prompt the child, to remain with the child during breaks or in the event that the equipment breaks down, and not to speak to the child about the case or allow anyone else to do so during any such interruption (section 4.4.3, *Equal Treatment Bench Book*, Judicial Studies Board, 2005).

The role of the court witness supporter is, by their presence, to provide emotional support to the witness and to reduce their anxiety and stress when giving evidence, thereby ensuring that the witness has the opportunity to give their best evidence. The role of any accompanying member of the court staff includes ensuring that the equipment in the live link room is working correctly. If the witness expresses a wish to be supported in the live link room, there can be benefits, both in reducing the stress suffered by the child and in the quality of the witness's evidence, if this wish is granted. The supporter should be someone with whom the witness has a relationship of trust. Ideally, this should be the person preparing the witness for court, but others may be appropriate (Appendix G.1-2, National Standards for the Court Witness Supporter in CCTV Link Room, *Achieving Best Evidence*, CJS, 2007).

The witness care officer will ensure that support requirements in preparation for court will be discussed and agreed with the witness (section 5.21). Support during the court process itself, in the live link room or when giving remote link evidence, is to be provided when it is necessary. The identity of the supporter must be the subject of an application to the court. As outlined in the Lord Chief Justice's Practice Direction[102], provided the supporter is completely independent of the case, they need not be the usher or other court official (section 5.23). The prosecution and defence have a responsibility to communicate any special needs of the witness to the court, including the presence of a court witness support person while

[102] Increased flexibility is permitted as to the identity of the supporter who must be completely independent of the witness and family and have no previous knowledge of or personal involvement in the case. This need not be an usher or court official. In issuing a direction identifying the supporter, the trial judge will balance all relevant interests: Lord Chief Justice, *Consolidated Criminal Practice Direction* Part III.29, Support for Witnesses Giving Evidence by Live Television Link, 2007.
www.justice.gov.uk/criminal/procrules_fin/contents/practice_direction/pd_consolidated.htm

evidence is given, either at the time the case file is reviewed or at a pre-trial hearing (section 5.44). Information to be communicated to the CPS in sufficient time to enable the necessary action to be taken (by the police case file, by an early special measures meeting or through a court witness support person) includes the child's views on issues such as the gender and identity of a court witness supporter to accompany the child in the live link room (section 5.80, *Achieving Best Evidence*, CJS, 2007).

Children can visit the court before the trial. They can also meet the witness supporter who will be with them at the trial and discuss any fears or concerns they have with the witness supporter or court staff. We will try to make sure that the supporter is someone that the child has already met and trusts, but the magistrates or judge make the final decision about who it is. We will make sure it is someone approved to work with children (p 14, *Children and young people*, CPS, 2006).

Experimental and observational research confirms the common-sense view that potential benefits to recall and stress reduction flow from the presence of a known and trusted supporter (Myers, 1997; Moston, 1992; and Batterman-Faunce and Goodman, 1993); that reduction in stress can enhance the quality of children's testimony (Hill and Hill, 1987; Davies and Noon 1990; Cashmore and De Haas, 1992; and Murray, 1995); and decrease suggestibility (Carter et al, 1996).[103] Children whose parent or loved one remained with them were rated as more credible witnesses and provided less inconsistent testimony regarding peripheral details during cross-examination (Batterman-Faunce and Goodman, 1993). All young witnesses referred to one Canadian support project are accompanied by a clinician when they give evidence by live link, which "has proven to facilitate the whole experience of testifying for both children and parents" (Child Witness Project, 2002).[104]

When the Judicial Studies Board instituted a series of child abuse seminars in 1996, the judge acting as course director said "It immediately became apparent how much practice varied at different courts. That surprised both those organising the seminars and those attending" (Crane, 1999). The principal difference in judicial practice around the country relates to who may accompany young witnesses while giving evidence; the approach depends, not on the needs of the individual witness, but on the level of court and where the child gives evidence. In a survey for an evaluation of young witness support, 23 out of 29 Crown Court judges (79

[103] Spencer and Flin (1993) provide a useful overview of stressors for young witnesses.
[104] The National Center for the Prosecution Of Child Abuse reports that courts in New York, Maryland, Texas, Washington and Florida in the USA allow children to be accompanied by trained "therapy dogs" to which children have previously been introduced (Justice, 2007). The dogs' presence has been demonstrated to lower stress levels by reducing children's heart rates.[104] During children's evidence, the dog lies outside the view of the jury. There have been few objections to the use of dogs in this way.

per cent) and 47 out of 55 magistrates and district judges (85 per cent) had no concerns about a young witness supporter accompanying children in the courtroom. This compared with 12 out of 29 Crown Court judges (41 per cent) and 48 out of 55 magistrates and district judges (87 per cent) who had no concerns about such a supporter accompanying children in the live link room (Plotnikoff and Woolfson, 2007a).[105] That study found that some judges were unaware of the Lord Chief Justice's Practice Direction, and that awareness of inflexible judicial attitudes on this point made some prosecutors reluctant to make special measures applications for supporters to accompany children in Crown Court.[106] The third Joint Inspectors' safeguarding children report highlighted variations between court areas which meant that "a suitably trained person did not always accompany the child" (para 163, HM Chief Inspector of Education, Children's Services and Skills et al, 2008).

In this project, referral forms for 85 children (47 per cent of 182) indicated that a supporter was identified in the special measures application. Only four applications (5 per cent of 85) named this person. The roles of the supporters identified (including the four where individuals were named) were as follows:

- 51 forms identified "the Witness Service" as the supporter.
- 12 identified "the usher".
- 14 identified another role or person (eight young witness scheme supporters, three police officers, two "witness care" – presumably witness supporters rather than WCU personnel – and one parent).
- Eight did not identify the role of the supporter.

Of 129 young witnesses who gave evidence by live link:

- All were accompanied, in a minority of cases by two people. Where this happened, the most common combination was a court usher and a Witness Service supporter.
- 85 (66 per cent of 129) were not accompanied by anyone they had met before the day of trial.

[105] The study found that judicial concerns about the use of young witness supporters were not shared to the same extent by the legal profession: of 36 barristers and solicitors surveyed, 31 (86 per cent) were content for young witness supporters to escort witnesses in court and 30 (83 per cent) were content with their presence in the TV link room.
[106] Witness support organisations indicated that decisions about who accompanied young witnesses while giving evidence was often determined by local custom rather than the needs of individual children.

Those who were accompanied by someone they knew and trusted (the supporter who prepared them for court or a relative) were more likely to feel confident while giving evidence than those not so accompanied:

Table 8 Feelings while giving evidence by TV link

How witness felt while giving evidence over the TV link	Number who felt this way	Number and % (of previous column) who were accompanied by a relative or known supporter
Confident	37	10 (27%)
Had a negative feeling	92	20 (22%)

Table 9 Persons accompanying young witnesses in the live link room[107]

Role	Number who accompanied young witnesses in live link room	Number and % (of previous column) who met the witness before day of trial
Usher	47	7 (15%)
Witness Service	71	15 (21%)
Young witness scheme supporter	21	13 (62%)
Relative	9	9 (100%)
Unidentified person	7	1 (14%)

Citing preferred practice that the supporter should be someone with whom the witness has a relationship of trust, CPS *Safeguarding Children* policy guidance (2008) notes that "It will be hard in most cases for the court usher to meet this criterion" (para 144).

> "The usher was the only person who was allowed to be with him in the TV link room, and this was a stranger, not the same usher he had met at the pre-trial visit." (Parent of James, 16)

Of 43 young people who gave evidence in the courtroom:

- 17 were not accompanied by a supporter
- nine were accompanied by a relative (all in magistrates' or youth court)
- seven by the Witness Service (two had met this person before)

[107] Totals in this table are greater than 129 as some witnesses were accompanied by two people. One witness was accompanied by an intermediary and this is not included in the table.

- seven by an usher (one had met this person before)
- two by a young witness supporter who prepared them for court before trial
- one by a police officer.

8.7.1 Children's preferences for a supporter while giving evidence

Little effort went into identifying children's views about an appropriate person to accompany them during their evidence. Of 148 young people referred to the project by WCUs and police officers where a parent interview was also conducted, 102 gave evidence by live link:

- Parents of 26 children (25 per cent of 102) recalled being asked who their child wanted with them in the live link room.
- WCUs and police officers were made aware of the views of 20 children (20 per cent of 102).

Young people who gave evidence were asked if they had a choice of supporter:

- 22 giving evidence on the live link (17 per cent of 129 giving evidence this way) were able to choose who accompanied them.
- Overall, 134 young people (78 per cent of 172 who gave evidence) said they had no choice about who accompanied them.

Of those young people who had no choice of supporter, 74 commented as follows:

- 42 would have preferred to have been accompanied by someone they knew, like a relative or teacher.
- 16 would have liked the supporter who prepared them for court before trial.
- Two would have liked a police officer.
- Nine were satisfied with the usher who accompanied them.
- Five were satisfied with the supporter who accompanied them.

As noted above, 85 (66 per cent of 129 who gave evidence on the live link) were not accompanied by anyone they had met before the day of trial. Many did not regard the person who accompanied them as a source of emotional support:

> "['Who would you have liked instead?'] "Anyone but her." (Enid, 14)

"The woman who came into the court with me just sat there and said nothing and then because it was lunch time she went home to feed her dog and I had to eat my lunch on my own." (Karen, 14)

"My eight year-old was crying and was dragged away from me to go with somebody she didn't know." (Parent of Norma*, 8)

Many wanted someone whom they already knew:

"Unfortunately when we gave evidence, the supporter was different from when we had the pre-trial visit. It would be better if you could stick with the same person you had seen before." (Simone, 13)

"I would have liked to have had someone who knew me there when I gave evidence." (Darren, 14)

"I would like to meet the person who sits in with you in the TV link room before the trial, not just on the day and some more regular visits beforehand." (Debbie, 12)

Being able to choose the gender of the supporter was important for several young people:

"You should be able to choose who supports you in the court. I liked having a woman with me but the other witness, a boy, did not like that." (Roxy, 16)

While many children wanted to be accompanied by a family member, several understood that the person accompanying them must not influence their evidence:

"I would have liked my mum or the young witness supporter who visited me at home. There are cameras in there with you so they wouldn't have been able to tell me what to say." (Rachel*, 15)

"It wouldn't have made a difference who it was. We weren't allowed relatives as they could influence what we said." (Gemma, 16)

"He was very definite that he would have liked to have someone he knew with him in the TV link room. He knew he could not have one of our family but would have liked to have the young witness supporter with him because they got on well." (Parent of Jeremy, 14)

Families were grateful when Witness Service volunteers changed their schedules in order to continue to support children whose evidence unexpectedly ran over to another day, but some

young witnesses who experienced long delays were further disadvantaged by a lack of continuity of supporter at the trial:

> "I gave evidence for three days. Each day someone different sat with me [from the Witness Service]." (Colin, 9)
>
> "The supporter who sat with me swopped: it wasn't even the person who introduced themselves in the morning." (Jade, 14)

HM Inspectorate of Court Administration has noted that "From the child's point of view, being accompanied by one person throughout – for example, the Witness Service volunteer – may make him/her feel more comfortable than being handed over to an usher at the crucial moment of entering the video-link room" (para 4.18, 2007). This last-minute handover was experienced by some witnesses:

> "The witness support woman walked me up to the court where the usher picked me up. She asked if I wanted her to come with me. I said 'No'." (Nick, 17)

In *Every Witness Matters* (2005), HM Courts Service states that "more than one agency 'owns' the victim and witness relationship". Some children experienced this shared ownership as tension between the various people involved in witness care:

> "[The young witness supporter] should have been allowed to come with us to court. We had never met the supporters who were there. They were nice but they were strangers." (Vera*, 11)
>
> "The witness support lady told my son she would go in with him but the court usher just took my son through. She said that as they [supporters] are voluntary they don't have authority. The ushers pretty much run the show." (Parent of Kenny, 15)
>
> "We'd been told that [the young witness scheme supporter] could sit with us. We were only told she couldn't two minutes before I went into court. I was told this was because it was not 'the court's Witness Service'. I didn't know who their Witness Service supporter was. It was awful. It set my nerves off even more. It was comforting knowing that my supporter was on the other side of the screen but the whole thing really unsettled me." (Rachel, 14)

8.8 The oath

Children under the age of 14 give evidence unsworn (section 55, Youth Justice and Criminal Evidence Act, 1999). HM Inspectorate of Court Administration has come across "some instances of what might be perceived as unwitting prejudice by some individuals in relation to oath-taking" and recommended that no witness be disadvantaged by the oath-taking procedure (Recommendation 2 and para 4.7, 2006).

A witness in the study who wished to affirm was upset by comments from an usher:

> "The usher was unfriendly and said it was sad that I didn't believe in God and it made me really angry." (Eve, 17)

9 Answering questions

9.1 Whether lawyers were polite

The national witness WAVES survey asks adult witnesses who were cross-examined whether defence lawyers were "courteous" or "discourteous". In this study, 172 young people who gave evidence were asked whether lawyers who questioned them were "polite":

- 157 (91 per cent of 172) described the prosecutor as polite.
- 49 (28 per cent) described the defence lawyer as polite.

"She [The defence lawyer] was very fair with her questions. I was supported all the way. Everyone was brilliant. Nobody treated me unfairly." (Leah, 16)

However, 84 young witnesses (49 per cent) had less positive views:

- 59 (34 per cent) described defence lawyers as "sarcastic" or "rude".
- 36 (21 per cent) said they were "aggressive".
- 25 (15 per cent) said they were "cross".

Other witnesses used terms about questioners and questioning that included "bullying", "badgering", "intimidating", "degrading", "disrespectful", "snappy", "pushy", "loud", "relentless", "abrupt" and "snotty".

"The judge was lovely and spoke to me like a person but the barrister spoke to me like an object." (Lorraine, 14)

9.2 Questions matching the age and abilities of young witnesses

Orders [concerning young witnesses] will generally deal with agreement by all parties on the use of language – some terms may need to be agreed by barristers or solicitors in the case. At trial, the judge should check at an early stage that all directions are in place and all special needs are catered for. This may include ascertaining that any solicitors or barristers involved are sensitive to the vulnerability of the child. Issues may include ensuring that, as regards the child's evidence, there is agreement on the likely timing (the child should be kept informed); the areas of agreement and any areas on which the child might be led; and the tenor, tone,

language and duration of questioning and cross-examination (sections 4.4.2, 4.4.3, *Equal Treatment Bench Book*, Judicial Studies Board, 2005).

Advocates should use words that match the age and abilities of child witnesses and allow children time to answer questions. Advocates have to challenge the evidence given by witnesses but they should not use over-harsh cross-examination with any child witness and words or phrases that the child cannot easily understand (pp 16-17, *Children and young people*, CPS, 2006).

Child witnesses fear being asked questions that they will not understand (Sas et al, 1991). In a Canadian study, 38 judges took the view that over 60 per cent of young witnesses are frequently asked developmentally inappropriate questions (that they could not reasonably be expected to answer) by defence advocates (Bala et al, 2005). While there has been no equivalent survey of judges in this country, feedback from young witnesses in this and other studies suggests similar findings.

The 172 young people who gave evidence were asked about being questioned. Bearing in mind that it is likely some young witnesses could not identify whether or not they understood all the questions put to them at court:

- 85 (49 per cent of those who gave evidence) said they understood all the questions.
- 85 (49 per cent) said they did not understand some questions (consistent with findings in Plotnikoff and Woolfson, 2004, 2007a and Hamlyn et al, 2004).
- The proportion giving evidence in magistrates' court who said they did not understand some questions was 42 per cent, compared with 58 per cent in Crown Court (the difference was statistically significant at the 5 per cent level).
- 59 (34 per cent) said questions were too complicated.
- 38 (22 per cent) said the pace of questions was too fast.

A witness supporter who observed the cross-examination of a seven-year old witness in this project said:

> "Both defence and prosecution were appropriate in their questioning and manner towards her. Both were mindful of her age and understanding and asked questions in a manner that she was able to understand."

However, several supporters described questioning that was overly technical or complex. One said a young witness answered in the affirmative after being asked if he had "embellished his evidence". Many young interviewees described problems in dealing with questions:

"Some were big long words and sentences. I had to ask him to break it up. He went too fast and he asked where I was at different times in the house." (Lorna*, 10)

"He tried to confuse me by asking several questions all at once." (John, 15)

"You have to take everything slowly as they try to hurry you in order to confuse you." (Mary, 15)

Problems with court language were reported by young witnesses in all age groups:

"I didn't understand all he said. He should speak a bit nicer and simpler." (Diana, 7)

"Some words were too complicated – too adult." (Andrew, 12)

"The lawyers shouldn't use big words, something people my age are not likely to know." (Elaine, 15)

"She was using all her lawyerly language – they get taught to speak like that and we don't. They don't realise they are talking to young people." (Esther, 16)

Taking together those who experienced one or more of the problems of comprehension, complexity, pace of questions that were too fast or having their answers talked over[108], of these 172 young people, 111 (65 per cent of 172) reported one or more of these problems.

9.2.1 Telling the court about a problem

Judges should never underestimate how little of the language of the court a child understands. A child may not admit to the fact that they do not understand something when in court, so judicial vigilance and some second-guessing are vital (section 4.1.3, *Equal Treatment Bench Book*, Judicial Studies Board, 2005).

[108] Questions described by children as being repetitive, making unrealistic demands on memory, jumping around in time or being difficult because of the questioner's manner or tone (including accusations of lying) were excluded from the analysis for this purpose.

If at any stage you do not understand a question that you have been asked, you should make this known to the questioner or the judge or magistrate (Standard 28, *The Witness Charter*, Ministry of Justice et al, 2008).

It is good practice to advise young people to tell the court if they do not understand a question or otherwise have a difficulty.[109] However, children are socialised to respond to questions even if they do not fully understand them, and research shows that they cannot be relied upon to say they do not understand, particularly to someone in a position of authority as in court. For example:

- When confronted by hard-to-understand questions, children often try to answer anyway, "either because they fail to recognise that they had not fully understood the question or because they do not possess effective strategies for coping with non-comprehension once detected" (Saywitz et al, 1999; also Lyon and Saywitz, 1999).
- Children aged five to 13 rarely asked for clarification in response to cross-examination and often attempted to answer questions that were confusing, complex or ambiguous (Zajac et al, 2003).
- Although nine- and ten-year olds were more likely to change incorrect responses than correct ones, they changed over 40 per cent of their correct responses. Cross-examination "exerted a significant negative effect on their overall accuracy levels" (Zajac and Hayne, 2005).
- Adolescents (roughly 11 to 18) can also be reluctant to ask for clarification or acknowledge that they do not understand. "Adults have a higher expectation of adolescents' ability to understand the convoluted language typical of court proceedings" and they are therefore in some ways at greater risk than younger people of being misjudged (Graffam Walker, 1999; Crawford and Bull, 2006).[110]
- It is therefore essential that questions be matched to a young person's developmental level, to preclude children from trying to answer questions they do not understand (Saywitz et al, 1999; Saywitz, 2002).

[109] Young witness support schemes' preparation of young witnesses for court (which seldom allowed children to practise saying they did not understand questions) was not enough by itself to address questioning that fails to take account of their communication abilities: Plotnikoff and Woolfson, 2007a. Similarly, although some witnesses benefit from services provided by the Witness Service, this does little to assist them to give evidence: Riding, 1999.
[110] Adolescents with language difficulties are at risk of having poor quality of emotional health and lower self-esteem: G. Conti-Ramsden et al, University of Manchester, reported in Nuffield Foundation Newsletter, Winter 2008.

Of 111 young witnesses who reported experiencing problems with comprehension, complexity, pace or having their answers talked over:

- 89 (80 per cent of 111 with a problem) had been advised they could tell the court.
- 50 (45 per cent of 111) 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 so.

> "There was no space for me to say 'Can you repeat the question?' When they said it, it felt you had to give an answer then, it was like high pressure." (Nick, 17)

As noted above, problems of understanding were reported by some young people in all age groups. Children of all ages also had difficulty in telling the court that they had a problem with questions:

- 37 aged 16 or over at trial experienced problems and 18 (49 per cent of this age with a problem about questions) told the court.
- 38 aged 14 or 15 experienced problems and 16 (42 per cent) told the court.
- 17 aged between 11 and 13 experienced problems and ten (59 per cent) told the court.
- 13 aged ten or under and six (46 per cent) told the court.

Saying they had a problem did not always remedy it. One 12 year-old (a boy with learning difficulties) said:

> "I said 'I can't understand'. But I still didn't understand when he said it again." (Dave, 12)

Five young witnesses said they did not alert the court to a problem with questions because they could not make eye-contact with the bench over the live link[111]:

> "I couldn't turn to the magistrates for help because I couldn't see them." (Mary, 15)
>
> "The TV link was directly on the defence lawyer. I could only see him." (Dale, 15)

[111] A major benefit of letting children practise on the TV link from the bench in the courtroom is that it helps them understand the judge or magistrates can always see them, even when they cannot see the judge or magistrates.

9.3 Avoiding misunderstanding

It is very important that the judge should explain to the child: the need to tell the truth and the importance of leaving nothing out when answering a question; the need to say so if the child does not understand the question or know the answer and the importance of not guessing; that the child will not get into trouble if they do not know the answer to a question; that there will be breaks, but that if the child wants a break they should say so; the need to tell the judge if the child has a problem of any sort at any time during the hearing (section 4.4.3, *Equal Treatment Bench Book*, Judicial Studies Board, 2005).

The manner in which the legal representative cross-examines a witness must not be improper or inappropriate. This may involve taking account of information about a witness's special needs. Both prosecution and defence should strive to avoid misunderstanding as a result of which the witness gives evidence that is not of the best quality that they could provide, for example, by avoiding a tone of voice which is intended only to sound firm but which might be intimidating (section 6.16, *Achieving Best Evidence*, CJS, 2007).

Commentators (for example, Raitt, 2007) consider that some advocacy textbooks promote "techniques designed to mislead and manipulate young witnesses in order to present them as unreliable".

Suggesting that young witnesses accept an alternative version or interpretation of events (the leading question) is a common cross-examination strategy. Research suggests this increases inaccuracies when used with children (Brennan and Brennan, 1988; Dent and Flin, 1992; Goodman and Bottoms, 1993; and Kranat and Westcott, 1994). Henderson (2002) asked barristers about techniques for questioning children and found that they were unaware of the dynamics of suggestion in children. They believed that tactics heightening the witness's suggestibility were appropriate and desirable: "To manipulate the witness is, in a very real sense, very close to the purpose of cross-examination."

Children are more suggestible when they are asked questions that confuse them (Davies and Noon, 1991). The way young people described leading questions suggested that they were often experienced as oppressive:

- 100 (58 per cent of 172 young people who gave evidence) said the other side's lawyer tried to make them say something they did not mean or put words in their mouth.

"He was trying to get me to say wrong things that made me feel upset and angry." (Andrew, 12)

"He twisted something I said. Trying to confuse me so I got my answers muddled up, so he could say I was lying." (Sam, 15)

"They try to trip you up by muddling your words – they said things back that wasn't what I said." (Rachel*, 15)

- 75 young witnesses (44 per cent) described being asked repetitive questions.

Children, especially younger children, tend to assume that if a question is repeated, the original answer is incorrect and are therefore likely to change their response (Saywitz and Lyon, 2001; Ceci et al, 2002; and Spencer and Flin, 1993). A witness supporter who observed the evidence of a ten-year old girl said:

"The defence barrister used her level of understanding to manipulate her evidence. He kept challenging what she was saying to the extent that in the end she thought that she was not giving the answer that they wanted so she changed her response."

"She was saying I was in the wrong and bringing stuff up that I'd already answered." (Suzie, 15)

"The judge said 'Move on' when she asked the same question over again." (Esther, 16)

The questions should be unambiguous and the child should be given full opportunity to answer (section 4.4.3, *Equal Treatment Bench Book*, Judicial Studies Board, 2005).

- 45 young witnesses (26 per cent) said defence representatives talked over some of their answers.

"He said I was lying – I couldn't even get a sentence out without him interrupting." (Karen, 14)

"As soon as she heard what she wanted, she'd carry on talking and I'd have to say 'I haven't finished'." (Esther, 16)

- 38 young witnesses (22 per cent) described questions focusing on details unrelated to the substance of the case or placing unrealistic demands on their memory.

"I was asked how big the playground was [where the assault took place] and when I couldn't say, they asked how many tennis courts would fit into it. I thought about it and said two but my dad says it was probably four. If it was important, why didn't they have a picture?" (Robin, 14)

"I particularly remember being harassed about the car door, whether it was open or closed and the lawyer arguing with me, for what seemed like forever. Then the magistrate stepped in to stop it." (Mary, 15)

Research indicates that questions which place unrealistic demands on the young witness's memory may induce unreliability (Saywitz, 1995).

"He implied that I was lying because I couldn't remember details – what happened was a year ago." (Elaine, 15)

Several young people described defence lawyer comments that they did not recognise as a question:

"He said 'I suggest to you that you picked the wrong person' [at the identification parade]. I didn't know this was a question." (Lorraine, 14)

"He used double negatives and said things about me that weren't questions. He said 'You must be a liar'." (Jimbo, 13)

9.3.1 Questions following a logical sequence

Prosecution and defence advocates should follow a systematic and logical sequence of questioning (section 6.16, *Achieving Best Evidence*, CJS, 2007).

- 34 young witnesses (20 per cent of 172) were asked questions that jumped around in time.

"The first [defence lawyer] got everyone into a muddle, he even got himself into a muddle jumping back and forth." (Dale, 15)

9.4 Statements or questions intended to insult or annoy

The legal representatives of the defendant have a duty to promote the best interests of the defendant by all proper and lawful means. This may include cross-examining vulnerable and intimidated witnesses about matters they may find extremely distressing. Such questioning is necessary, provided that it relates to matters that are relevant to the case and is not done merely to insult or annoy the witness (section 6.16, *Achieving Best Evidence*, CJS, 2007).

A barrister must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify, insult or annoy either a witness or some other person (section 708(g), *Code of Conduct*, General Council of the Bar, 2004).

"A child who is not under attack, being undermined or publicly humiliated is more likely to accurately recall and honestly relate the events that took place" (Davies et al, 1997). UN *Guidelines on justice for child victims and witnesses of crime* state that young witnesses "should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity" (UN Economic and Social Council, 2004). The Guidelines emphasise the need for training for judges, prosecutors and lawyers to include "appropriate adult-child communication skills". Temkin considers that legal training should also address the ethics of advocacy (2000).[112]

Of 172 young witnesses who gave evidence, 66 (38 per cent) said the defence lawyer did something else that made it difficult for them to answer questions. Some children were thrown by personal questions:

"He [the defence lawyer] said 'Do you think I am nice looking?'. I said 'No'. He said 'Would you kiss me?' I said 'No'." (Vera*, 11)

"The defence lawyer asked me to stand up and asked me how much I weighed." (Ann, 15)

"He showed a picture to everyone he got from Facebook which showed me in hot pants at my friend's birthday party." (Alice, 17)

"One of the lawyers made me shout, she was horrid to me. I was asked if I wore knickers to school, and what size of sanitary towels I used. I didn't think they could talk to me like that. They didn't take into consideration that we were children." (Elsie, 16)

[112] Parameters of appropriate cross-examination were discussed at seminars on young people in the criminal justice system, run jointly by the Criminal Bar Association and NSPCC, in early 2007.

Some questions were successful in scandalising the witness:

> "He asked 'Are you sure you're not making this up because your mum was abused?' My mum had told me she had been abused but he didn't know that. He shouldn't have asked me about my mum. I started crying and the witness supporter asked the judge for a break." (Siri*, 12)
>
> "The defence said my uncle abused me when I was one year old. I roared. I'd never heard this and I found out later it was totally made up. There was never any such allegation. The judge went mental – 'How's she supposed to know what happened when she was one year old?' But he [the defence barrister] got what he wanted. I was mega put back." (Carrie*, 18)

9.4.1 Body language and behaviour

Some children were disconcerted by lawyers' body language and mannerisms:

> "The defence barrister was rude and kept turning away from me to look at the jury when I was speaking. At one point he laughed when I was crying and needed a break. Even the supporter agreed he was laughing at me. (Carrie*, 18)
>
> "He was playing with his face – it was distracting." (Elaine, 15)
>
> "He used big words and then the sentences didn't go together properly. He brought up something that wasn't relevant and he ended up throwing his wig on the table." (Karen, 14)

The parent of an eight year-old described the defence barrister's style of questioning as "Tut, blow, roll eyes, sigh". A witness supporter commented on the approach of the defence lawyer to a boy of 15 in a different case:

> "When the witness was introduced to the members of the court he [the defence advocate] made no attempt to acknowledge the boy or put him at ease with a raised hand or a nod. He just went straight into his questions. There was very little eye contact, with the lawyer concentrating on his notes rather than the witness. His tone was aggressive and sarcastic, questions were repetitive and on the long side. No attempt was made to keep the questions short and age-appropriate. When asking about the sexual content of the incident there was no attempt to go gently, and in fact the lawyer was very pushy to get a quick answer. Had the boy answered in the tone of the defence lawyer, the exchange would have sounded more akin to a street brawl than professional questioning."

9.4.2 Grounds for asking if witnesses are telling lies

Allegations of misconduct by a witness may not be made unless the legal representative has reasonable grounds for making them. Some legal representatives routinely ask young witnesses 'Do you tell lies?', but this ought to be avoided unless the legal representative has grounds for thinking that the witness is an habitual liar (other than the fact that the witness's evidence contradicts that of the defendant) (section 6.16, *Achieving Best Evidence*, CJS, 2007).

"Telling the truth but no one believing me" is regarded by children as one of life's most stressful occurrences (Yamamoto et al, 1987). Emotional arousal can cause a child to give inaccurate answers or to agree with the suggestion that they are lying simply to bring questioning to an end (Schuman et al, 1999). At a recent Bar seminar, Her Honour Judge Tapping said that she would not allow a child to be called a liar a second time "because it tends to put a block on what the child would want to say".[113]

Of 172 young witnesses who gave evidence:

- 98 (57 per cent of 172) said the defence lawyer accused them of lying.
- Of these, 69 (70 per cent of young witnesses who recalled being accused of lying) said this happened more than once.

"After two years [since reporting the offence], you speak differently, you think differently, you remember more that makes more sense now than it did then, yet they challenge you on these differences to make you out a liar. So much is levelled about giving him a fair trial, when I'm not getting a fair trial myself. It's too weighted against the witness. You feel you'd rather take a shotgun to your head than for someone to call you a liar. This took the wind out of me. He [the defence barrister] didn't know me." (Carrie*, 18)

"He told me I was lying when I responded to the first question. In two or three cases I didn't know the words he used in the questions." (Don, 15)

Young people's accounts could be challenged without a direct accusation of lying:

"He said "Are those your words or what the police tried to get you to say?'" (Barry, 15)

"He put it in other words: 'I suggest that your mind has exaggerated it over time.'" (Jess, 16)

[113] Criminal Bar Association – NSPCC seminar *Young People in the Criminal Justice System,* Gray's Inn, 20 February 2008.

9.5 Demonstrating intimate touching

Child witnesses may be particularly distressed when asked to show on their own body where they were touched, or to mimic sexual actions, and this should be avoided. The pre-trial supporter should discuss with the police and legal representatives whether the child may be asked to demonstrate intimate touching at court. If this is a possibility, consideration should be given to providing a doll, model or drawing to which the child can point. The judge's agreement should be sought on the use of an alternative method before the question arises (section 5.76, *Achieving Best Evidence*, CJS, 2007).

It is almost always inappropriate and unnecessary to have the child point to parts of their own bodies. Consider using diagrams or body maps (para 11, *Safeguarding Children*, CPS, 2007).

David Jones, consultant child and family psychiatrist, Park Hospital for Children, Oxford, advises that asking the witness to show intimate touching on the witness's own body is likely to be negative and may be abusive, particularly when asked by a person perceived as 'powerful', as in an investigative interview or at court (Plotnikoff and Woolfson, 2007b).[114]

Six victims of sexual offences (11 per cent of 55 such victims) volunteered that they were asked to demonstrate intimate touching on their body (this was not a study question so the number may have been higher). Four reported instances occurred in Crown Court and two in magistrates' court. No witness mentioned being given a drawing or doll for this purpose.

"It was really embarrassing. It would have been easier to point to a drawing. It must be awful for little children." (Rosie, 19)

"I was asked to show where he touched me on my privates – twice." (Petra*, 7)

Supporters observed two of these instances. One noted "The young witness was asked repeatedly where she had been touched when she had made it clear from the first question. She was then asked to demonstrate where she had been touched on her body."

9.6 Disclosing the witness's address

Witnesses should not be asked to give their address aloud in court unless for a specific reason (section 6.93, *Achieving Best Evidence*, CJS, 2007).

[114] Russell (2008) discusses use of diagrams in courts in the US.

Judges, magistrates and court staff will only require you to disclose your address in open court if it is relevant to the case (Standard 28, *The Witness Charter*, CJS, 2008b).

Young witnesses were not asked about this at interview but four volunteered that their address was given during questioning and that they were upset by this. One instance involved a 16 year-old who was concerned about intimidation and was giving evidence relating to a gun offence. In a different case, a witness supporter observed that a child's address was given three times during her evidence, including being used as a "truth or lie" question in her visually recorded statement.[115] The supporter noted that this child had been granted screens on the day of trial because she had particular concerns about being identified by the defendant. It was unclear whether the disclosures of the witness's address were material to the cases in which they occurred.

9.7 Intervention by the prosecutor

The prosecutor should seek to protect the witness from improper or inappropriate questioning by drawing it to the judge's or magistrates' attention. In the same way, a defence representative should seek to ensure that the court bears in mind the needs of a defence witness while they are giving evidence (section 6.17, *Achieving Best Evidence*, CJS, 2007).

If a prosecution advocate thinks a defence advocate is being too aggressive, or not giving a child time to answer, they will ask the magistrates or judge to intervene (p 17, *Children and young people*, CPS, 2006).

Prosecutors may seek the court's intervention where cross-examination is considered to be inappropriate or oppressive (*Prosecutors' Pledge*, CPS, 2007).

The lawyer for any party may object to questions that may be put to you, which they will seek to do if cross-examination by another party is considered to be unreasonable, for example, if it is unfair, offensive or oppressive (Standard 29, *The Witness Charter*, CJS, 2008b).

The proportion of witnesses recalling interventions by the prosecutor was much lower than the proportion of young people who reported experiencing problems with questions. Of 172 young witnesses who gave evidence:

[115] This is wrong for another reason. Section 2.143, *Achieving Best Evidence,* 2007, states "**It is important that the examples chosen are really lies, not merely incorrect statements**: lies must include an **intent** to deceive another person" (emphasis in the original).

- 23 (13 per cent of 172) recalled the prosecutor intervening in respect of how questions were asked by the defence.
- Nine of these young witnesses who recalled intervention (39 per cent of 23) had told the court they had a problem, though it was not always clear whether this prompted the prosecutor's intervention.
- Only one supporter of 78 who observed children's evidence recalled intervention by a prosecutor asking for questions to be put in a different way.

"Even I was struggling to understand the questions. But the judge and the prosecutor interrupted to make sure he could understand." (Parent of Calum, 17)

Some young people and parents felt that the prosecutor had not intervened when it was necessary:

"The supporter said if anyone said something wrong, your barrister would stop it. They made it out to be a fairy land. It did not turn out like that." (Nick, 17)

"I felt really let down by the prosecutor because the way my daughter was questioned was very inappropriate. She ended up saying over and over again 'I don't know' or 'I can't remember'. She was overtired. Someone described the defence lawyer as like a dog with a bone. He spent 25 minutes on one question. The judge turned off the monitor and said 'Don't put words in her mouth'." (Parent of Nigella*, 10)

9.8 Intervention by the judiciary

Judges and magistrates have a duty to protect the interests of the defendant at trial, who is presumed innocent until proven guilty. However, they also have a responsibility to ensure that all witnesses, including those who are vulnerable or intimidated, are enabled to give their evidence. They have to strike a balance under Article 6 of the European Convention on Human Rights between protecting the defendant's right to a fair trial, and ensuring that witnesses who give evidence in the case are enabled to do so to the best of their ability (section 6.8). Judges and magistrates are expected to take an active role in the management of cases involving vulnerable and intimidated witnesses, and to ensure that elements of the court process that cause undue distress to such witnesses are minimised (section 6.9). Their responsibilities extend to the prevention of improper or inappropriate questioning. Judges and magistrates should have regard to the reasonable interests of witnesses, particularly those who are in court to give distressing evidence, as they are entitled to be protected from

avoidable distress in doing so. The sort of questioning likely to be ruled out is anything that lacks relevance, or is repetitive, oppressive or intimidating. Questioning may be intimidating because of its content, or because of the tone of voice employed. An advocate may be asked to rephrase a question if it is in a form or manner likely to lead to misunderstanding on the part of the witness. A young witness, or a witness with learning disabilities, for example, may easily be confused by questions that contain double negatives ('Is it not true that you were not there?'), or that ask two questions at the same time ('Is it true that you were there and you heard what was said?'). Judges and magistrates should be alert to the possibility that a witness might be experiencing difficulty in understanding a question which, if not corrected, might lead to the giving of evidence that is not of the best quality that the witness could provide (section 6.11, *Achieving Best Evidence*, CJS, 2007).

Judges should ensure that advocates do not attempt over-rigorous cross-examination and that they use language that is free of jargon and appropriate to the age of the child. If a child does not understand a question, they may be tempted to give the answer that they think the questioner wants, rather than the true answer. The child may also be afraid to disagree with a powerful adult figure. Judicial vigilance is always necessary. While it is important to cater for a child's needs and comfort, judicial efforts to that end should never be such as to amount to a suggestion that the child's evidence is likely to be more credible than that of any another witness. Consistently with that, steps to limit the distress experienced by a child must not overcome the necessity of ensuring that a party has been given a proper opportunity to challenge the evidence of the child (section 4.4.3, *Equal Treatment Bench Book*, Judicial Studies Board, 2005).

Bearing in mind that young witnesses may not have been aware of all judicial interventions (for example, if their live link screen was turned off during discussions between the bench and questioner), of 172 young witnesses who gave evidence:

- 65 (38 per cent of 172) 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.

- 33 of these witnesses (51 per cent of the 65 who recalled an intervention from the bench) had told the court they had a problem, though it was not always clear whether this is what prompted the intervention.[116]
- Ten of 78 supporters (13 per cent) who observed children's evidence recalled intervention from the bench asking for questions to be put in a different way.

Young witnesses found it helpful if the judge said at the start that the young person should say if they encountered a problem:

> "I told the judge [about the problem]. He'd said at the start, 'If you have a problem, just ask me'." (Calum, 13)

Judicial interventions were made for repetitive and complex questions:

> "The judge said 'One question at a time, please rephrase'. He did this even when I hadn't said I was having a problem. The judge was really excellent." (Esther, 16)
>
> "The judge kept stopping, saying 'Are you OK?' and 'She's told you the answer'. He was dead nice, the judge." (Sam, 15)

At least one intervention came when the child was accused of lying more than once:

> "He said I was lying lots but the judge stepped in." (Rea, 11)

Young witnesses are less likely to make mistakes when questioned in a supportive rather than an intimidatory manner (Goodman et al, 1991). Judicial interventions also seemed to be made on grounds of tone:

> "The lawyer should be asked to speak more politely although the judge did tell him to calm down." (Karen, 14)
>
> "The lawyer had an angry face and raised her voice to me. Four or five times the judge jumped in because she had crossed the line. Fair enough, it's her job, but she well and truly crossed it. She was trying to put me in a bad light. I was shaking all over." (Katy, 17)

For some, judicial intervention did not come soon enough:

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[116] An evaluation of a specialist jurisdiction for child sexual assault in New South Wales found that although training was given to judicial officers and prosecutors, children were 'still subjected to overly long, complex questioning' and judicial intervention varied across trials: Cashmore and Trimboli, 2005.

"The defence lawyer was very intimidating and should've been stopped sooner from telling me I'd said something I hadn't." (Jim, 13)

"Because there were two defendants, there were two solicitors asking him questions. They were both rude to him. It was a long time before the district judge intervened." (Parent of John, 15)

Judges sometimes intervened in other ways:

"I didn't want to use swear words in repeating my statement but the judge said it was OK." (Helen, 16)

9.9 How children understood "cross-examination"

In order to explore their understanding of cross-examination, young people who gave evidence were asked if they could explain the term to other young witnesses: 70 (41 per cent of 172) could not say, or were unfamiliar with the term (see also Crawford and Bull, 2006). Explanations offered by others revealed young people's perceptions about the way they were treated at court:

"It is quite scary but it's their job to make you do something wrong. You've to be careful to try not to get something wrong because you'd destroy the whole case." (Andrew, 12)

"Stick to your account. They'll try all sorts of tricks. They'll call you a liar. They'll talk over you. They'll manipulate you so that your answer sounds different to how you remember. They won't want to hear everything." (Simon, 13)

"Be prepared to answer questions. Make sure you take everything slowly as they will try to hurry you in order to confuse you. Don't be put off by aggressive tactics. It's very difficult." (Mary, 15)

"He's trying to find a glitch that would help the defendant but won't let you fully explain what the reasons are." (Sean, 16)

"The main thing is for the young witness not to panic. You need to step back from the evidence giving and remember that it's not you that's being judged – you haven't done anything, you're actually just helping." (Eve, 17)

9.10 Perceptions of the fairness of questioning

It is not possible to ask jurors in this country about their perceptions of the way young witnesses are treated. In a survey in Sydney, Australia, jurors rated children's treatment by defence lawyers as significantly less fair than children's treatment either by judges or prosecutors; children were perceived to have more difficulty understanding questions asked by defence lawyers and were less confident and more stressed when answering these questions (Cashmore and Trimboli, 2006).

Young people who gave evidence were asked if they had been able to tell the court everything they wanted to say:

- 134 (78 per cent of 172) told the court everything they wanted to say.
- 35 (20 per cent) did not get to say everything they wanted to tell the court.

> "I felt too nervous to say everything so I answered mostly just 'yes' and 'no'." (Rea, 11)

Parents and children asked about the fairness of questioning gave similar responses. Children said that:

- 102 (59 per cent of 172 who gave evidence) thought they were treated fairly when they were cross-examined.
- 64 (37 per cent) thought they had been treated unfairly.

The same question was asked of parents of 162 children who gave evidence:

- 97 (56 per cent) thought their child had been treated fairly when being questioned.
- 62 (38 per cent) felt their child had been questioned unfairly.

Answers to this question were available for 113 parent and child "pairs":

- 71 parents and children (63 per cent) agreed the child had been treated fairly
- 42 parents and children (37 per cent) agreed the child had been treated unfairly.

Most comments from young people about unfairness related to not understanding words or questions or to the manner, tone and approach of questioners, as described above. Other reasons for feeling unfairly treated related to delay at court and children's tiredness by the time they were questioned; the defendant not having to answer questions; and to their visually recorded statement not being played to the court as their evidence-in-chief. One girl was

distressed because she was not allowed to give a full account at court of what happened between herself and the defendant (a teacher):

> "I was told I couldn't say he'd had sex with me because he hadn't been charged with this. My diary and our email were edited but without any explanation to the jury. When I couldn't answer questions about what happened, it looked as if I was lying. There was another witness who [the defendant] told that he'd slept with me and she wasn't allowed to say this either. I have no way to get an answer to why I wasn't allowed to say what happened to me." (Connie*, 17)

Another girl felt the trial process was unfair to her even though it ended in a conviction. She wrote down what she thought:

> "Thank you for cancelling five minutes before I was going to leave home to go to court [on the first trial date]; not letting the court have a proper plan of the shop where the offence happened (they said 'He had nowhere to do [the offence]'); for lasting a year then getting annoyed when I didn't remember every date; for giving him a translator to hide behind when he is a Londoner; for [the defendant's sentence of] 80 hours of community service and five years on a bit of paper [sex offender registration]; for not believing me and for him still living up the road – I enjoy getting dirty looks from him and his family." (Susan, 17)

Nearly all comments about unfairness from parents concerned questioning that was seen as developmentally inappropriate and oppressive:

> "The lawyers don't consider they are dealing with children. They need to consider their level of understanding and the tone. I was appalled – it was a real eye opener what they put the girls through, trying to get someone off." (Parent of Katy, 17)
>
> "The defence said 'Hello' and banged straight into it. He was aggressive and forceful. He said over and over, 'He didn't do that, did he?'" (Parent of Diana, 7)

Some parents felt ill-equipped to prepare or protect their children from the experience and aftermath of cross-examination:

> "I would have liked to prepare my child for the cross-questioning. It was a shock to watch them so viciously accused." (Parent of Jude, 12)
>
> "I know how to deal with cut knees, but my daughters have questions about court that I don't know how to answer. I wanted them to be heard, to be believed. Anyone else doing this should be told the pitfalls." (Parent of Nigella*, 10)

9.11 Breaks in testimony

Orders will generally deal with whether a child witness has any special needs eg requiring frequent breaks – as a general rule after half an hour a child will be tired, whether or not this becomes obvious (section 4.4.2, *Equal Treatment Bench Book*, Judicial Studies Board, 2005).

The responsibilities of judges and magistrates to protect the interests of vulnerable or intimidated witnesses include giving them a break, whether because they are giving distressing evidence or because they have a limited concentration span. Young and vulnerable witnesses should be invited to tell the court when they need a break but courts should not rely on the witness's ability to identify when this is necessary. Planned breaks are less likely to occur at a time that would favour one side over another (section 6.10). The legal representative of the prosecution should also be alert to a witness's need for regular breaks (section 6.17). The court witness supporter will need to make prior arrangements to enable the court to be alerted to a vulnerable witness's need for a break. Supporters should ensure that information is passed to the CPS or, in the case of a defence witness, to the defendant's legal representative. This will enable the judge and legal representatives to plan breaks in the witness's testimony (section 5.70, *Achieving Best Evidence*, CJS, 2007).

It is good practice to advise young witnesses that they can ask for a break but they cannot be relied upon to recognise when their attention is flagging. They may wish to "go on and get it over with" when they are tired or distressed. Of those young witnesses who gave evidence:

- 97 (56 per cent of 172) were offered a break.
- Of 71 who were not offered a break, 19 (11 per cent of 172) would have liked one.

A few courts used a coloured card system so that young witnesses or their supporter could signal when a break was needed. Being offered a break, even if not taken, was appreciated:

> "I had about three breaks." (Ellen, 8)
>
> "Several people told me about asking for breaks – that was really helpful." (Jasmin, 15)

Others would have liked to stop for a short time during their evidence:

> "I asked for a break and some bloke said 'Well, you're nearly finished'." (Martha, 15)
>
> "I would have liked a break. I was crumbling and I needed to cry – my jaw was shaking." (Rosie, 19)

9.12 "Best evidence" and questioning as a safeguarding and welfare issue

All witnesses have to be able to understand questions and be able to give replies that can be understood. An intermediary who is specially trained to help children communicate can help them understand and answer questions, if they would find this difficult without help (p 9, *Children and young people*, CPS, 2006).

Children's entitlement to understand questions and have their answers understood in criminal proceedings are safeguarding concerns just as much as they are the basis of "best evidence". Article 12 of the *UN Convention on the Rights of the Child* (1989) places an obligation on courts "to create the optimum circumstances in which a child as witness is freed to give his or her account of events" (Cleland and Sutherland, 1996). The American Bar Association's *Handbook On Questioning Children* was produced because "children in our courts today are being denied a right that should belong to everyone who enters the legal system: to have an equal opportunity not only to understand the language of the proceedings, but to be understood. This is a situation that puts not just children, but all those who stand both with and against the child, in jeopardy" (Graffam Walker, 1999).

The Bercow report: *A Review of Services for Children and Young People (0-19) with Speech, Language and Communication Needs* (DCSF, 2008) revealed that:

- Seven per cent of children now have significant difficulties with speech or language.[117]
- Those with good speech sounds and poor language skills are most at risk of being missed.
- Approximately 50 per cent of children and young people in some socio-economically disadvantaged populations have speech and language skills that are significantly lower than those of other children of the same age.

Other studies show that:

- 10 per cent of children in Britain aged five to 16 have a clinically recognisable mental disorder (Office for National Statistics, 2004).[118]
- Rates of childhood autism (a lifelong developmental disability affecting how a person communicates) are now suggested to be around 1 per cent, far higher than previous estimates (Baird et al, 2006).

[117] Hartshorne (2006) estimated that 10 per cent of children have a communication disability.
[118] www.statistics.gov.uk/cci/nugget.asp?id=229

- Chronic childhood trauma interferes with neurobiological development and questions reminding of the trauma may cause the child to "freeze" and shut down their ability to respond (van der Kolk, 2005).[119]

Findings in this chapter supplement a body of research documenting young witnesses' communication problems at court (eg Plotnikoff and Woolfson, 2007a, 2004; Ellison, 2002; and Saywitz, 2002 and 1995). Young witnesses' feedback from these and other studies strongly suggests that professionals at court often fail to recognise the full extent of communication problems.[120]

Witnesses under 17 are automatically eligible for special measures. Since completion of phased roll-out of the intermediary scheme in 2008, the range of measures has included consideration of assessment by a registered intermediary, a communication specialist (section 29, Youth Justice and Criminal Evidence Act, 1999). General special measures tests apply including, crucially, whether use of an intermediary is likely to maximise the quality of a vulnerable witness's evidence. Intermediaries assess the witness's abilities and facilitate communication at investigative interview and trial. Their assessment reports contain guidance on how best to meet the witness's specific communication needs, one of the most welcome features of the scheme when it was evaluated (Plotnikoff and Woolfson, 2007b). A unique feature of the scheme is that, unlike a supporter[121] or a witness profiler[122], an intermediary can help the court by flagging up potential communication problems during questioning and, with the court's permission, assist in resolving them.

Two of 182 young interviewees were assessed by a registered intermediary prior to giving evidence. Witness A was a 12 year-old with autism who was assisted by an intermediary at investigative interview and at trial. Her evidence was taken by remote link at her school, over

[119] An overview of issues in psychological research and practice relating to child witnesses is given in Westcott (2006).
[120] Studies noting that children's lack of comprehension may not be immediately apparent to trial participants include Davies and Noon, 1991; Murray, 1995; and Henderson, 2002, 2003. Two linked studies analysing court transcripts from 1994-1999 compared lawyers' questioning strategies (Kebbell et al, 2004) and judicial interventions in court cases involving witnesses with learning disabilities and from the general population (O'Kelly et al, 2003). These found no significant differences in how the two groups were treated by judges and lawyers.
[121] This has never been part of the supporter's role. A supporter accompanying a child in this project said "The witness was asked to describe distance and did not understand the concept. I would have liked to intervene but I couldn't."
[122] 'Witness profiling', involving assessment of vulnerable witnesses (section 16, Youth Justice and Criminal Evidence Act 1999) and their intensive preparation for court, was pioneered by the Investigations Support Unit, Liverpool City Council, which reports that profiling has been adopted in around eight other areas of England and Wales: email to the authors, 24 October 2008.

three days in mornings only[123] and on a fourth day, when the remote link failed, at Crown Court. This witness said:

> "I said I couldn't hear [the questions]. She [the intermediary] helped."

Witness B was 18 by the time of trial. She had learning difficulties and was partially sighted. This girl was interviewed by the police two years before the intermediary scheme was introduced so she had not been accompanied by an intermediary at the investigative interview, but one was appointed to assess her just before the trial. The intermediary recommended that she be permitted to assist the witness at trial but the judge refused the application on the basis that the witness would be able to cope with questions without the intermediary's assistance. This witness said:

> "Both of them [the defence barristers] were horrible. They were harsh, repeating themselves all the time. It is a bit annoying. You just want to have a go at them. They got told off by the judge. I felt upset. I came out really crying." (Kate, 18)

9.12.1 Eligibility of children in the sample to be assessed by an intermediary

As a general rule of thumb, an intermediary may be able to help improve the quality of evidence of any child who is unable to detect and cope with misunderstanding, particularly in the court context (ie if a child seems unlikely to be able to recognise a problematic question or tell the questioner that he or she has not understood, then assessment by an intermediary should be considered) (Box 2.1, *Achieving Best Evidence*, CJS, 2007).

The study considered to what extent the two-part "rule of thumb" test (in deciding whether assessment by an intermediary is appropriate) could be applied to young witnesses in England and Wales (this special measure is not available in Northern Ireland). First, assessment should be considered for young witnesses who seem unlikely to recognise a problematic question.[124] In this study, 75 young witnesses (47 per cent of 160 who gave evidence in England and Wales) did not understand some questions at trial. This suggests that questioning of nearly half the children was inappropriate, and it is likely that at least some of the remaining 85 children who gave evidence here failed to recognise that they did not understand some questions.

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[123] Great efforts were made to accommodate this witness's special needs. These included a meeting with the prosecution barrister before trial at her school and sitting at a different Crown Court which could make the remote link connection. However, the support needs of this witness and her family were not well addressed: see section 5.1.
[124] Carter et al (1996) suggested that children below the age of eight cannot reliably detect non-comprehension.

The second part of the test suggests that assessment should be considered for young witnesses who are unable to tell questioners that they have not understood: 54 children (55 per cent of 98) who experienced comprehension or other questioning difficulties did not alert the court. On this basis alone, these 54 young people would have been appropriate for intermediary assessment.

All young people under 17 in England and Wales (not just the "very young") are eligible to be considered for the intermediary special measure. Contrary to the mistaken belief of some criminal justice practitioners, children need not have a mental or physical disorder or disability (the eligibility criteria for adult witnesses). Their communication needs may derive from trauma, lack of concentration or challenging behaviour, but no medically diagnosed communication difficulty. However, the presence of underlying conditions should be taken into account. Parents of 35 children (22 per cent of 161 for whom parental information was obtained in England and Wales) indicated that their children had one or more of the following problems:

- health issues including asthma, hearing, sight or mobility problems
- conditions including learning difficulties, autistic spectrum disorders, ADHD and dyslexia
- a short attention span for their age
- poor levels of speech.

The police have primary responsibility for identifying eligibility for the intermediary special measure. Many young people taking part in this study were interviewed by the police before the intermediary scheme was introduced but gave evidence after it was rolled out. It might therefore have been anticipated that the need for intermediary assessment would have been picked up by the police and other organisations for more of these witnesses in the pre-trial period. Information provided by referring organisations indicated that no one in the criminal justice process was aware of some children's needs:

"The way the questions were asked, it was like [my 12-year-old son] was on trial. It reduced him to tears. He was asked confusing questions that did not take account of his learning difficulties. I shouted out in the court. No one spoke to me about his needs or offered us any help before court." (Parent of Dave, 12)

"My son has learning difficulties, ADHD and a big anger problem. No one asked us about this." (Parent of Calum, 17)

"We were not offered any support of any kind until the Witness Service at the trial. My daughter has a heart defect which is affected if she is under stress. We were never asked about her wishes or needs." (Roberta, 16)

"My son has difficulties with reading and writing. He has ADHD and Tourette's syndrome. We were never asked about either child's needs and wishes. We were not offered any support." (Parent of Dylan, 15)

Other children's vulnerabilities were known to the police, WCUs, Witness Services and (where they were involved) young witness schemes but these children were apparently not considered for intermediary assessment. Some who might have benefited included:

- A seven year-old who found questions at court "too hard and harsh" and who was receiving pre-trial therapy for sexual assault by her stepfather.
- A 14 year-old who had been home-schooled because of extreme shyness and was only attending school three days a week by the time of trial. She was much smaller than her younger sister. She was carried, weeping, into the live link room by her father and refused to answer questions.
- A 14 year-old whose hearing aids had not been supplied by the time she gave evidence. On the live link, the barrister was not on screen properly so she could not see his mouth and had difficulty lip-reading to understand him. The supporter recalled "I realise now that X may have had difficulty understanding him fully but at the time I completely forgot about her hearing problem. The questions were too complex for her. I thought 'She isn't getting this, even though she's 14'. The judge did try to interrupt the cross-examination but by then she was already confused".
- A 15 year-old with petit mal, a form of epilepsy causing absences which may not be apparent to observers over a live link (which this witness used). She said "I felt a bit stupid, I didn't understand some questions. He asked questions in questions and used long words".

Taking together children who experienced problems with questioning but did not bring this to the attention of the court, those with underlying physical or developmental conditions and those who experienced stress symptoms that could affect the quality of their evidence, the study suggests 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 available at the time of trial[125]) may have benefited from having their communication skills assessed by an intermediary. Only one of these 74 was the subject of such an assessment.[126]

Consideration of the quality of the witness's evidence, in combination with the objective of "best evidence", invites practitioners to adopt a broad approach to defining eligibility. This study confirms the intermediary evaluation finding (Plotnikoff and Woolfson, 2007b) that there is a significant gulf between legislative intent and receptivity of criminal justice practitioners to the eligibility of young witnesses for intermediary assessment.

9.13 What children would change about their treatment as witnesses

Of 172 witnesses who gave evidence, 43 (25 per cent) could not think of things they would change about the way they were treated as witnesses (this was a hard task for some). However, 128 (74 per cent) suggested things that should be improved:

- 53 wanted changes to questioning by defence representatives, including questioners being more polite, easier to understand and not calling them a liar
- 26 wanted not to wait so long before giving evidence
- 17 wanted to be kept separate from the defendant at court
- 15 wanted more choice about special measures and who accompanied them in the live link room (including a choice of gender of this person)
- 12 thought the waiting and/or live link room should be more comfortable and that equipment should work
- 12 wanted something to do, such as computer games, while they were waiting
- six wanted to meet the prosecutor before trial, to be able to ask them questions and to be able to understand their questions in court
- others wanted earlier decisions about special measures; have judges or magistrates introduce themselves; have people identify themselves at court; not to have to give their address out loud at court; and be thanked for coming to court.

[125] For this purpose, three children in Northern Ireland who gave evidence in England were excluded.
[126] An intermediary was used at police interview and trial for a young interviewee in a criminal justice area where the special measure had not yet been implemented at the time of the trial. Many criminal justice areas began requesting intermediary appointments well in advance of formal national roll out of the scheme: 12 non-pathfinder areas accounted for 17 per cent of intermediary appointments when the scheme was evaluated in 2004-06 (Plotnikoff and Woolfson, 2007b).

10 Safeguarding and promoting the welfare of young witnesses

10.1 Overview

Article 3.1 of the *UN Convention on the Rights of the Child* (1989) states that in all actions concerning children "undertaken by… courts of law… the best interests of the child shall be the primary consideration".

Every Child Matters (2003) sets out the government's agenda to improve outcomes for children in England. Three are particularly relevant to young witnesses: "being healthy" and "staying safe", given the "danger they can become victims for a second time during criminal cases because of the way they are treated" (*Children and Young People*, CPS, 2006); and "making a positive contribution", given the requirement to perform a public service by giving evidence.[127] A wider definition of "safeguarding" has been adopted[128] which the Secretary of State for Children, Schools and Families describes as covering "all the things we need to do to keep children safe and promote their welfare".[129]

Safeguarding young witnesses covers a wide range of issues, not confined to this chapter. The report has already dealt with many aspects addressed by the CPS report *Safeguarding Children – Guidance on children as victims and witnesses* (2008), namely explanations to young witnesses, waiting time, delays, familiarisation visits, memory refreshing, pre-trial support, inappropriate questioning and the presence of a supporter "with whom the witness has a relationship of trust". This chapter focuses on:

- the impact of the witness role on children's education, health and welfare
- what "making a positive contribution" means for young witnesses, including actions taken by others that validate the young witness's contribution.

[127] The others are "enjoying and achieving" and "achieving economic well-being".
[128] "The process of protecting children from abuse or neglect and preventing impairment of their health and development, and ensuring they are growing up in circumstances consistent with the provision of safe and effective care that enables children to have optimum life chances and enter adulthood successfully": *Working together to safeguard children*, revised edition (HM Government, 2006).
[129] Introduction, Staying Safe: a consultation document (DFES, 2007).

10.2 Impact on education

Of 172 young interviewees in full-time education:

- 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.
- 20 (12 per cent) reported that their concentration was affected.
- 11 (6 per cent) said they were bullied at school or college as a result of the court case.
- Seven (4 per cent) got into trouble at school for poor behaviour which they attributed to the offence and the court case.

Several children mentioned that their testimony was scheduled for dates when they had to miss exams at school (see section 3.1, above).

"I was wanting to get it over. I was always thinking about what happened. I dropped out altogether without taking my GCSEs." (Kimberley*, 18)

"She is having nightmares and flashbacks and she's drinking because of this. Her predicted GCSEs were very good but the results were not good. Her college has not been sympathetic." (Parent of Susan, 17)

Of those in full-time education, 60 (35 per cent of 172) described their school or college as supportive. This was particularly important where the offence and/or intimidation took place on school premises:

"Every day the defendant's friends called me snitch and grass. They started hitting me. This went on for a few months. The school noted something wasn't right. I was trying to make friends by being the class clown. Teachers noticed I wasn't hanging round with anyone. The school asked me about it but I wouldn't admit it. But I told my mum and she told the school. It stopped when the police went to speak to them." (Jimbo, 13)

"It took ages for my school to expel the boys. I left to go to college, but I didn't know two of the defendants also attended. After I was intimidated by one of them, the college made them sign an agreement not to come near me. The college changed their timetable so they were not at college on the same day as me. When one of them broke the agreement, he was expelled." (Katy, 17)

However, 33 (19 per cent of 172) thought their school had been unsupportive (the remainder either did not inform the school of the offence or described the school as neither supportive nor unsupportive):

> "I had to go to court, so I didn't get my prize at the end of term." (Calum, 13)

This young witness was proud of his 100 per cent school attendance record, but he had to go to court twice when the trial was adjourned the first time. He said the school would not make any allowance for the reason for his absence and he did not get the award, as he had at the end of every other year.

> "The school was useless about the intimidation. I was the one taken out of class and put in a support unit." (John, 15)
>
> "For a time the headmaster walked my child to the bus stop as the defendant was threatening to do it again [assault her]. [After the intimidation] we went to see the head teacher. He was nice and polite but after that nothing happened. He was more bothered about the school. We asked them to swap lessons so that our daughter wasn't in the same classes [as the defendant] but they wouldn't." (Parent of Alice, 13)

Five young witnesses had to move school because of intimidation:

> "This happened at school. Originally the school agreed to keep [the defendants] separate but we saw them right away. Teachers didn't return our calls when mum asked for work to be sent home. I was off for three months until I changed school. The school should have been more helpful and asked if we needed anything. They just pulled down the shutters, I think they were angry we reported to the police. You expect to be safe at school." (Elsie, 16)
>
> "The school was not helpful. It suggested that I come late and leave early. Mum wasn't satisfied with this and kept me out of school for six weeks until the school agreed to provide a taxi. In the end, I changed schools: why should it have been me that had to move?" (Rachel*, 15)

Intimidation is discussed further in section 10.3.1 below.

10.3 Impact on health and welfare

The 182 young interviewees described their personal support networks before the trial:

- 176 (97 per cent) young people said their family was supportive.

- 139 (76 per cent) were supported by friends (others said friends were unsupportive or they did not want friends to know about the offence or that they were going to court).

At interview, five young witnesses expressed concern about their mothers' welfare, including one whose mother had taken an overdose.

> "I needed someone to talk to because my mum was ill. I couldn't talk to her." (Leonora, 13)

Describing their feelings in the run up to the trial, 39 (21 per cent of 182) young people described themselves as "OK", not too worried throughout the pre-trial period. The remaining 143 (79 per cent who described themselves as worried or anxious) were asked about the nature of their concerns:

- 90 (49 per cent of 182) were anxious about giving evidence.
- 46 (25 per cent) felt scared.
- 37 (20 per cent) described themselves as intimidated by the offender or offender's friends/family.
- 28 (15 per cent) were afraid to go out.
- 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.

> "I was worried about losing the case, them catching me out in questioning, about forgetting something and about them [the defendants] recognising me." (Elaine, 15)
>
> "Talking in front of everyone and messing it up." (Jim, 13)

Many recalled worries about not knowing what to expect and unanswered questions about court:

> "They were confusing about where I would be when giving evidence." (Paul, 16)
>
> "There were loads of questions that were not answered at first about who'd be there and who'd see the evidence, though I found this out eventually." (Andrew, 12)

10.3.1 Intimidation

Although witness intimidation occurs in nearly one in ten reported crimes, only one third of intimidated witnesses report this to the police (Tarling et al, 2000). As noted above, 20 per cent of young witnesses described themselves as intimidated by the defendant or the defendant's associates before the trial and 15 per cent were afraid to go out. Parents of 49 children (28 per cent of 172 for whom a parental interview was conducted) noted pre-trial intimidation of their child by the defendant, his family or friends.

Fear of intimidation can have a major impact on normal daily routines (Anderson et al, 2008):

> "She wasn't sleeping. She would lock herself in her room and not go out for fear of bumping into him. She has eczema which got much worse as a result of the stress coming up to court. She was moody and up and down." (Parent of Samantha*, 16)

Others described the adverse effects of actual intimidation:

> "The whole family has been intimidated by the defendant and his brother, who called at the house separately and suggested they dropped the case. Both little girls had been so bullied about having red hair that they asked for their hair to be dyed black. It is just growing out." (Parent of Jack, 14)
>
> "Having to give evidence twice, combined with the intimidation not being dealt with by the police, has had a profound effect on my daughter. The girl I had a year ago compared to the one I have now is unrecognisable." (Parent of Katy, 17)
>
> "She has been having panic attacks when seeing members of the defendants' families, especially one of the mothers, who shouts at her in the street. This has caused her to stop going to school and she is having lessons sent to her home, but it is interfering with the preparation for her exams and the school are not very sympathetic. She has an eating disorder." (Parent of Roxy, 16)
>
> "Intimidation [from the defendant and his family] made it harder. Derek had to find other places to go with his friends. He couldn't go to his best friend's house who lives opposite the defendant. [The best friend] was there at the incident and was not allowed to discuss it with Derek. My children found it very difficult. E was very angry. If there was a bang outside, Evelyn jumped. The children got very good at hiding it [their problems]. Evelyn didn't sleep normally." (Parent of Derek, 15 and Evelyn, 17)

Several who reported intimidation to the police felt the response was inadequate. The police guidance manual *Working with Intimidated Witnesses* expects steps to be taken to stop even "low level harassment" (Office for Criminal Justice Reform, 2006a).

"We feel totally let down. The police did nothing when my daughter was threatened by the defendant's family not to attend court." (Parent of Charlotte, 17)

Some noted the lack of bail conditions on the defendant to keep away from witnesses:

"The police discussed it [intimidation] but only in the sense to be careful. The officer advised us to put a camera in the window. There were no bail restrictions whatever." (Parent of Derek, 15 and Evelyn, 17)

"None of them had bail conditions. This should have been automatic, as there was ongoing harassment from one of the defendants and his mum who live only a street away. All of this was logged by the police but they did nothing. It's shocking – he's still harassing my daughter. Harassment should be dealt with seriously." (Parent of Carol, 15)

In one instance, the police apologised for not following up:

"This happened at school. I stayed home because one of the defendants was verbally abusing me. I didn't want to go to court at all the second time. One boy's relative came up to me in the street and was shouting at me before the appeal. The police took a statement after several calls but they didn't help at the time. He was arrested and charged two months later. An inspector came to see us at home to apologise." (Elsie, 16)

The families of six young people moved house as a result of intimidation and, as noted above, five changed schools:

"We were worried about the repercussions. We moved house because of the sheer hell of the other family. My son dropped out of his special school and we moved the younger children out of school too. I don't think the court realised or cared. The police didn't do anything about witnesses being intimidated. But you have to do the right thing." (Parent of Calum, 17)

For some, concerns about repercussions continued even when the case was over. One teenager left her mother's home and went to live with a man she thought could protect her:

"I came out of the TV link room and burst into tears. After the trial, I was crying and couldn't sleep. I was appalled when we found out there would be an appeal and I didn't want to go but mum persuaded me. I was intimidated by one of the defendants before the appeal. The police did absolutely nothing. I was afraid and I didn't want to be at home, I wanted to be somewhere where a full-grown man would protect me. It's taking me a long time to get over being a witness." (Katy, 17)

"He didn't get special measures. He went into court and faced the defendant despite having been intimidated by him before the court date. He knows where we live and keeps walking past the house." (Parent of Martin, 15)

"Before, we were anonymous, now both he and his mother know what we look like and they live in our area. By letting my child give evidence I feel that I have made him unsafe and a target for maybe more assaults from the defendant or any of his friends and family. We were told of the outcome but no one came to our house to talk about what the sentence means for the defendant and what it really entails. There was no aftercare or support for my child." (Parent of Jed, 17)

10.3.2 Symptoms of stress

Young people who are victims or witnesses of crime may experience stress as a result of the crime. However, stress can also result from involvement in the court system, including delay before and at court and ignorance of the court process (Spencer and Flin, 1993). Of 182 young people, 95 (52 per cent) described at least one symptom of stress in the pre-trial period.[130] Parents identified a further 11 children who experienced stress symptoms before the trial but who had not acknowledged this at interview. Young people described their symptoms as follows:

- 53 (29 per cent of 182) had sleep problems and two (1 per cent) said they wet the bed.
- 18 (10 per cent) had appetite problems and seven (4 per cent) felt sick or had stomach aches.
- 15 (8 per cent) were depressed.
- 13 (7 per cent) experienced panic attacks or flashbacks.

[130] This compares with 40 per cent of young witnesses in Plotnikoff and Woolfson, 2004 and over 80 per cent in Plotnikoff and Woolfson, 2007a.

- Three (2 per cent) acknowledged self-harming in some way. One of these had been suicidal. The supporter said she was brought to court from hospital with a drip in her arm. The witness had a panic attack and had to be taken back to hospital. The trial was adjourned.
- 20 (11 per cent) mentioned feeling weepy, becoming more introverted or more aggressive and one reported worsening of nervous eczema.

"I was worried about seeing him and I was scared to go to my room at night in case he'd be there." (Andrew, 12)

"Normally I'm a very happy-go-lucky person but I was sad all the time. I only slept three or four hours a night – usually it's eight or nine. I only ate one meal a day." (Eve, 17)

"My seven year-old kept being sent home from school because she said she didn't feel well." (Parent of Petra*, 7)

Few of the 95 young witnesses describing stress symptoms received external help to deal with stress:

- 26 children (27 per cent of 95) said a supporter showed them techniques to help with feeling tense.[131]
- 24 (25 per cent) received medical help and nine received prescription medicine.

The group of 95 young witnesses who reported symptoms of stress was compared with the 87 who did not. A greater proportion of those reporting stress symptoms were victims of sexual offences: 49 per cent (47 of 95) compared with 9 per cent (8 of 87): the difference was statistically significant at the 5 per cent level. Age profiles of the two groups were very similar: 72 per cent of those reporting symptoms (68 of 95) were aged 14 and over, compared with 76 per cent (66 of 87) in this age group not reporting stress.

10.3.3 Therapy

Whether a child should receive pre-trial therapy is not a decision for the police or the CPS. Such decisions can only be taken by all of the professionals from agencies responsible for the child's welfare, in consultation with the carers and the child him or herself, if of sufficient age and understanding. The child's best interests are the paramount consideration in these

[131] Relaxation techniques are described in the NSPCC handbook for child witness supporters *Preparing young witnesses for court* (Plotnikoff and Woolfson, 1998).

decisions (paras 4.3-4, *Provision of Therapy for Child Witnesses Prior to a Criminal Trial: Practice Guidance*, CPS, Department of Health and Home Office, 2001).[132]

We will never say that a child cannot have therapy until the trial is over. A child's need for therapy comes first (p 13, *Children and young people*, CPS, 2006).[133]

Research for the Canadian Department of Justice found that young witnesses receiving pre-trial therapy or counselling were better able to make use of the programme preparing them for court (Campbell Research Associates, 1992). Parents were asked whether they sought counselling or therapy for their child before the trial if he or she was feeling stressed. While some were unaware such services existed:

- Parents of 32 young people (19 per cent of 172 for whom parental information was provided) sought counselling for their child before the trial.
- Despite clear guidance to the contrary, parents of 15 children (9 per cent) had been advised not to do so before the trial. Most had been advised by police officers but such advice was also given in the same areas by young witness schemes and local authority children's services, suggesting a local culture in which policy on pre-trial therapy was misunderstood.

Constraints on what could be dealt with in pre-trial therapy could have a deterring effect:

"I was on Tamazepam for stress and depression – it was awful because mum didn't believe what I had said my step-dad did. I was told I could go for counselling and I went twice but they said I couldn't talk about what had happened to me[134] so I stopped going. You want to talk to someone who is not emotionally involved. After the trial is over, when you've come out the other side, there's no point in starting counselling then." (Esther, 16)

Parents of 27 young people (16 per cent of 172 for whom a parental interview was conducted) sought therapy or counselling for them after the trial. However, some other parents and children felt that counselling after the trial came too late:

[132] This guidance is being updated.
[133] Guidance was re-circulated by CPS in May 2008 and has been reinforced in other internal and external publications. HM CPS Inspectorate (2008) identified 'anecdotal concerns that children may be being prevented from having pre-trial therapy for fear of jeopardising the criminal proceedings': para 5.4, *Safeguarding Children*.
[134] The relevant policy does not preclude children talking about what happened to them but highlights the risk of a request for disclosure of the therapist's records and the therapist being called as a witness. Confidentiality cannot be guaranteed in advance: paras 3.5, 3.15 *Provision of Therapy for Child Witnesses Prior to a Criminal Trial*, Home Office et al, 2001.

"I wanted to speak to someone when it all came out but the police said it would mess up my evidence or something. Now I don't want to speak to anyone because it's all over [the case]. As a family we were left to just get on with it." (Carrie*, 16)

"The school has advised her about counselling (not anyone in the CJS) but my daughter doesn't want to do this now." (Parent of Katy, 17)

"They have both seriously changed. They are having nightmares. A feels guilty as he is the eldest and was not able to stop it happening to B. A has gone within himself and B is full of anger – he won't let anyone into his personal space. I asked for help but the social worker told us categorically that the boys could not have counselling before the trial because it would interfere with their evidence. They so needed something in place right there, right then. There was a huge gap – 15 months to wait for trial. Even now [that the trial is over], no one's offered help." (Parent of seven year-old twins Alan and Brian)

Most parents seeking counselling services before or after trial were assisted to find a local resource by social services, teachers and doctors. Thirteen children were helped to find a service by the police, eight by witness supporters and four by WCUs.[135] Delays of months in receipt of counselling were common.

10.3.4 Welfare while giving evidence

"It is widely acknowledged that children generally do not have the resources to cope with the rigours of the adversarial process which exacerbates the damage to their psychological and emotional well-being created by the initial offence" (Raitt, 2007, quoting Dent and Flin, 1992 and Spencer and Flin, 1993).

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

- 56 (33 per cent of 172) 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".

[135] The research team provided advice on sources of therapeutic help to families who requested this.

Young people were not asked if they had cried while giving evidence but 15 (9 per cent of 172) said they had done so, including a few who had described themselves as generally feeling confident while answering questions.

Parents of 51 children and supporters of 80 children who watched young witnesses give evidence were asked about how well these children's needs were accommodated by the court. While supporters were more likely than parents to assess children's needs as being met by the court, both groups of observers identified numbers of 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:

Table 10 How parents considered witnesses' needs were accommodated at trial

	Not well	Quite well	Very well
Level of understanding	8 (16% of 51)	24 (47%)	16 (31%)
Health needs/tiredness	11 (22%)	17 (33%)	18 (35%)
Welfare (emotional state)	14 (27%)	18 (35%)	17 (33%)

Table 11 How supporters considered witnesses' needs were accommodated at trial

	Not well	Quite well	Very well
Level of understanding	5 (6% of 80)	39 (49%)	26 (33%)
Tiredness	5 (6%)	32 (40%)	35 (44%)
Welfare (emotional state)	8 (10%)	37 (46%)	25 (31%)

10.3.5 Advice about Criminal Injuries Compensation

Victim Support/Witness Service should inform victims about their eligibility to criminal injuries compensation and offer help to fill in the correct form (paras 3.3.1, 3.4.7, *Victim Support's National Standards*, 2006).

There is no obligation in the *Victims' Code* (CJS, 2006) on any organisation to notify victims of their eligibility for Criminal Injuries Compensation, although an explanation is included in the Home Office *Victims of Crime* leaflet[136] which the police are required to give to all victims.

[136] Available at: www.cjsonline.gov.uk/downloads/application/pdf/victimsofcrime.pdf

Parents of 52 children (30 per cent of 172 for whom parent information was available) said someone advised them about whether or not their child was eligible to claim for Criminal Injuries Compensation.[137] Parents of 30 victims of sexual or violent offences who gave evidence at Crown Court (53 per cent of 57 such parents interviewed), ie victims of serious offences more likely to give rise to a claim, reported receiving this information from someone in the criminal justice process.[138] (Interviewers sent Criminal Injuries Compensation Authority details to some parents who requested it for children who may have been eligible.) One mother had been incorrectly advised that her daughters were not eligible for Criminal Injuries Compensation because the defendant was acquitted.

10.4 Making a positive contribution

Society requires children to perform a public service when they give evidence. Enabling them to make a "positive contribution" is a key outcome for children (*Every Child Matters*, 2003). This includes actions taken by others that validate the young person's contribution. HM Courts Service Employee Handbook *Every Witness Matters* emphasises that ensuring the witness's contribution is valued and appreciated by the court is an "underlying consumer need" (2005).

10.4.1 Thanking witnesses

Each child victim or prosecution witness will have his or her own witness care officer who will say "thank you" at the end of the case (p 11). We will always find time to thank child witnesses (p 19, *Children and young people*, CPS, 2006).

As noted in section 2.3 above, WCUs seldom had direct contact with witnesses under 17. Of the 172 young interviewees who gave evidence, 143 (83 per cent) recalled being thanked by one or more people when their testimony was finished:

- 92 (53 per cent of 172) by a judge or magistrate
- 58 (34 per cent) by a prosecutor
- 56 (33 per cent) by a supporter[139]

[137] The House of Commons Public Accounts Committee has criticised poor public awareness of the scheme, noting that a 2006 survey found that only 36 per cent of victims of violent crime were aware of it, though not all would have been eligible: p 9, 2008.
[138] This compares with 50 per cent of witnesses injured as a result of their crime who were aged 16 and over and who were interviewed for witness WAVES surveys: Moore and Blakeborough, 2008.
[139] Victim Support National Office points out that, while this may happen, it is not the role of the supporter to thank the witness.

- 26 (15 per cent) by a police officer
- 25 (15 per cent) by an usher
- 15 (9 per cent) by a witness care officer on the phone
- seven (4 per cent) could not recall who thanked them.

"The clerk and my barrister and the judge all said 'Well done'." (Hector, 10)

"The judge – when he came out and shook my hand it made me feel better." (Debbie, 12)

"I wish someone had said afterwards 'I realise how difficult it was', but the supporter didn't even say 'Thank you', she just asked to carry the cups out of the TV link room. They should have sat down with me for five minutes." (Enid, 14)

"'Thank you' – That simple word makes all the difference." (Rosie, 19)

For one young witness, recognition of her contribution came through a nomination made by her college:

"Although my daughter said there was nothing positive for her about being a witness, she was very pleased to be nominated for a local 'Crime-Beaters Bravery Award' by her tutor. She had her photo taken with the High Sheriff. Also, the judge at the appeal said at the end that her evidence was very significant, but she wouldn't have known this if I had not been there to hear it. No one passed this on." (Katy, 17)

10.4.2 Informing witnesses of the outcome

The enhanced service under the Victims' Code includes notifying victims about court hearings and case outcomes within one working day of receiving information from the court (section 6, *Victims' Code*, CJS, 2006).

Each child victim or prosecution witness will have his or her own witness care officer who will explain what happened at court hearings (p 11). The advocate or CPS representative will talk to the victim after the trial about the verdict. Children in particular may need reassurance that it is not their fault (p 18, *Children and young people*, CPS, 2006).

Parents of 142 children (83 per cent of 172 such interviews) said someone from the criminal justice system told them about the case outcome. Many parents and some young people were at court for the verdict.

"The magistrate called us into court to explain why I didn't give evidence and the verdict." (Kevin, 14)

Some families received information about case outcomes from more than one source. Police, prosecutors and witness care officers left messages and phone texts; a few mentioned receiving results by letter. Several were given numbers to ring for court results but the onus was on them to call:

"We had a phone number to ring but we found out more from [father of another witness] who saw it to the end. No one called us about the bail conditions or the verdict." (Gemma, 16)

Some did not first hear about the result from a criminal justice source but read about the outcome in the paper, heard from another witness, the defendant's family or another way:

"No one told us about the verdict either time. We only found out the result at Crown Court when the witness care officer called us about your research." (Rita, 16)

Some complained of not being informed of case outcomes promptly:

"I wouldn't have known the verdict at either court if mum hadn't been there – both times, it took ages for them to tell us." (Katy, 17)

"Both WCUs were very slow in telling us the court outcomes – it was certainly about a month the second time, but we knew the verdict because I had gone to court myself." (Parent of Chris, 14)

In the course of the research, some witness care officers said that they had to delay in calling families with results because courts themselves were slow in providing the information:

"The police told us the outcome a few days later. The witness care officer said they couldn't tell us until it was officially recorded." (John, 15)

Families could be frustrated about the lack of information about youth court[140] outcomes because of the confidentiality involved:

"Communication was poor throughout. Even at the end, I had to chase up to find out the result and as it was the juvenile court they said they couldn't tell me. Then I got a phone call to say compensation was awarded but no other information." (Parent of Calum, 17)

[140] Youth court procedures were generally found to be confusing, including why witnesses' parents were excluded when the defendant's parents were admitted. Interviewees also said no one warned them that children might have to give evidence twice because of the ease of appeal from the youth court.

Court-ordered compensation[141] could also be the subject of confusion:

> "We were told (over the phone) that my child will get compensation from the defendant but have not heard or received any letters about this." (Parent of Jed, 17)

10.4.3 Post-trial support

The judge can also give directions about support to child witnesses following the conclusion of a trial. For example: a defendant in criminal proceedings may be found not guilty and the child witness may feel they have not been believed; a child may feel guilty and ashamed about giving evidence against a family member. These feelings will not disappear with the conclusion of the case. Support can be made available from suitable professionals at the direction of the court (section 4.1.4, *Equal Treatment Bench Book*, Judicial Studies Board, 2005).

Key tasks for the supporter include debriefing the witness and parent/carer and arranging for any follow-up support, including specialist help (Appendix F3, National Standards for Young Witness Preparation, *Achieving Best Evidence*, CJS, 2007).

Each child victim or prosecution witness will have his or her own witness care officer who will offer support after the case (p 11, *Children and young people,* CPS, 2006).

The Witness Service or other supporter will seek to give you the chance to talk over the case when it has ended and provide you with more help or information, including advice on what help is available if you think you are at risk of intimidation after appearing as a witness. If you need further help after the trial, the WCU, Witness Service or other witness supporter will refer you to relevant support agencies where they are available (Standard 32, *The Witness Charter*, CJS, 2008b).

Witness support organisations did themselves not offer post-trial support in all areas: 37 of 52 Witness Services (England and Wales) and six of seven young witness schemes routinely provided support or a de-brief after the day of trial (in all, 73 per cent of support organisations surveyed).[142] Such support was not offered to some witnesses who were still distressed after the trial (see below).

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[141] The research team forwarded various questions raised by families to WCUs concerning whether compensation was paid as a priority over court costs (it is); whether they could cash a cheque for compensation when they received notice of appeal; and whether it would be paid in instalments or in a lump sum in their cases.

[142] Victim Support National Office advised that the Witness Service is expected to debrief the witness at court or follow up by phone. If ongoing support is needed, it will refer witnesses to Victim Support's community service, available in all areas.

Of 81 young witnesses who met a supporter pre-trial to prepare them for court, 37 (46 per cent of 81) said this supporter met them after the case was over to discuss what happened.

Parents of 72 children said their child was offered and they accepted face-to-face contact with a supporter before trial. Of these:

- parents said 42 children (58 per cent of 72) were offered post-trial contact with a supporter, of whom seven (17 per cent of those to whom an offer was made) declined.

Of the parents of 35 children who accepted post-trial support:

- 28 (80 per cent of 35) said the child had enough contact with the supporter post-trial.
- Four (11 per cent) said there was not enough such contact (three others did not express a view).

"We were told of the outcome, but no one came to our house to talk about what the sentence means for the defendant and what it really entails. There was no aftercare or support for my children." (Parent of Jed, 17)

10.4.4 How they felt when court was over

After they finished giving evidence, young witnesses described their feelings as follows:

- 134 young people (78 per cent of 172) were relieved
- 32 (19 per cent) felt tired or exhausted
- 23 (13 per cent) felt angry
- nine (5 per cent) felt sick
- 61 (35 per cent) described a variety of other feelings.

Many young people described a negative experience:

"I felt very, very not good." (Dave, 12)

"It was terrible. I was under oath for three days so I couldn't speak to my mum and dad about it. It was just like he [the defence lawyer] was bullying me." (Connie*, 17)

"When you come out of court, you feel as degraded as the acts made you feel. He [the defence barrister] is bringing you down to your lowest place – places you don't want to go yourself. He makes you relive everything in gross detail. He can say what he likes to me and I have to be polite. They speak to you like a piece of meat. It plays with your head. Going to

court is meant to give you a sense of justice but I feel I've been humiliated in public." (Carrie*, 18)

By the time of the study interview, of 172 who gave evidence:

- 95 young people (55 per cent) said they felt better.
- 55 (32 per cent) felt they had put the court experience behind them (attributed, variously, to getting the case over with, family support, their own personality and the outcome being a conviction). Some said they were not very upset in the first place.
- 14 (8 per cent) were still worried.
- 13 (8 per cent) were still upset.
- Six (3 per cent) still felt scared.
- 47 (27 per cent) described other feelings. Those expressing positive (18) and negative (19) feelings by the time of the interview were almost equally divided, with another 10 describing themselves as "not bothered".

Those who did not feel they had moved on since the court case are of concern. There has been no research in this country to examine the impact of the witness role on children years after court. A follow-up study 12 years on of over 200 young victims of sexual assault in the USA found that greater distress while waiting to testify and while actually testifying predicted poor adjustment, especially in those who were adolescents at trial (Quas et al, 2005). That study emphasised the importance of making the court process less stressful, both in the short and long term, and providing support and information to ensure that children are prepared throughout court process, whether or not they testify. A follow-up study 12 years on in Canada found that "kind words and actions" by criminal justice personnel "helped ameliorate the distress of many young witnesses" (Child Witness Project, 2002).

10.4.5 Did they feel they made a "positive contribution"?

Witnesses should "come away from the experience believing that their contribution to the case has been important and material" (*Every Witness Matters: Components of 'Vision 2010'*, HMCS, October 2008).

With hindsight, 86 (50 per cent of 172 young witnesses who gave evidence) identified something good or positive for them in having been a witness. Factors they mentioned included the importance of being believed by the court and the support of friends and family. Several referred to having "done the right thing", standing up for themselves or on behalf of

friends or a family member; one mentioned helping the community. Those expressing positive feelings included some younger witnesses:

"The court believed us." (Diana, 7)

"I kept calm and answered the questions clearly and didn't get flustered. My dad said he was proud of me." (Josie, 10)

"It was character-building and doing the right thing for my sister." (Jim, 13)

"I was proud of what I was doing. I made a strong case. I felt overjoyed that I'd done my bit and I wasn't the only one doing it. They realised they can't get away with it. [The defendant] is no longer at school and I'm no longer in the same tutor group as his friends. Now I've got my life back." (Jimbo, 13)

Thirty of 86 young people who identified something positive in the experience of being a witness linked this to the conviction of the defendant:

"We put him into jail." (Petra*, 7)

"That I could get him into jail for what he'd done." (Hector, 10)

Of 172 young witnesses who gave evidence:

- 112 (65 per cent) would do so again in future (though many qualified this by saying "Only if I absolutely had to"). Of these:
  - 101 had been thanked (90 per cent of 112)
  - 91 (81 per cent) had given evidence in a trial resulting in a conviction.

"I would be a witness again because I have been through it so I know what goes on." (Sandra, 14)

"My friends didn't have to give evidence for me, but they did. Without them, it could have turned out very differently. That's why I would give evidence again if I was asked." (Esther, 16)

Parents of 118 young people who gave evidence (73 per cent of 162 for whom parental information was obtained) were willing for their child to do so again, sometimes even if the child had a bad experience.

However, 56 children (33 per cent of those who gave evidence) thought they would be unwilling to do it again:

"I wouldn't go to the police if this happened to me again. It was such a bad experience – it was an ordeal." (Enid, 14)

"I have a part-time job at Woolworths. After my experience, I'd rather lose my job than have to give evidence about a shoplifter." (Katy, 17)

Parents of 46 children (27 per cent of 172) said there had been a point before or at trial when they thought they would not let their child give evidence:

- 16 were helped to go on by supporters, the police and a school mentor, including nine who stressed the importance of help from young witness schemes.
- 14 said they had gone on because of a desire for justice and because it was the "right thing to do". One said "You come this far, you have to try".
- Six were relieved by the availability of the live link or screens.
- Five said their child was determined to give evidence.
- Five said their child felt pressured or coerced to give evidence.

Judge Pigot's Advisory Group on Video Evidence concluded that children should not be required to give evidence "whether in open court or protected by screens or closed circuit television, *unless they wish to do so.* This principle… is not only absolutely necessary for their welfare, but is also essential in overcoming the reluctance of children and their parents to assist the authorities" (paras 2.22, 7.14, Home Office, 1989, emphasis added).

The five young people who felt coerced included two who were summonsed to attend court, one of whom was summonsed when the young witness supporter passed on the girl's fears about giving evidence to the police. A third was threatened with a summons (she said the police told her she would not have to testify if she identified the defendant at an identification procedure). The fourth instance involved a witness who became distressed during her testimony and left the live link room a number of times. The prosecutor said that if she did not go back in, the case would be dropped. The parent said this was done in a "most unpleasant" way (confirmed by the Witness Service) and this was later the subject of a complaint to CPS. The final instance also involved a witness who did not want to give evidence once he got to court:

"I was nearly crying, I wanted to see my mum. I said 'I don't want to do it'. The usher said 'You're going to go to jail if you don't. There is no turning back'. After day two, they said 'If you don't come back we will come and arrest you'." (Nick, 17)

Parents of 31 children who had given evidence (19 per cent of 162 for whom parental information was obtained) were unwilling for their child to testify in future, sometimes linking this to the lack of support on this occasion:

> "I am trying to influence my daughter to be a caring responsible member of the community. I explained to her she should have been allowed to enjoy her night out without fear of attack on the streets. This is the reason we proceeded with the court case – to make sure it doesn't happen to anyone else. I would seriously consider before letting her or recommending anyone in similar circumstances to go through the court procedure due to the stress it caused for my daughter and myself with no support." (Parent of Hannah, 15)

11 Conclusions and recommendations

In 2004, the NSPCC and Victim Support report *In their own words* described the experiences of 50 young witnesses. It concluded that:

> "Despite a network of policies and procedures intended to facilitate children's evidence, only a handful of young witnesses… gave evidence in anything approaching the optimum circumstances. Their experiences revealed a chasm – an implementation gap – between policy objectives and actual delivery around the country."

This study, the first national survey of young witnesses and their parents or carers across England, Wales and Northern Ireland, considered whether "the implementation gap" has narrowed since 2004.

A wide range of government commitments to young witnesses has been issued or updated since 2004, providing a sound framework for supporting young witnesses and enabling them to give their best evidence. This study examined levels of delivery and the results illustrate the benefits experienced by young witnesses when these policies are put into practice. For example, the introduction of WCUs has made an important contribution to conveying information to families of young witnesses in England and Wales: 75 per cent of parents acknowledged receipt of information before trial from a WCU, more than from any other source.

Overall, however, findings reveal a significant gap between the vision of policy and the reality of many children's experiences. The picture therefore remains disappointing, particularly in respect of:

- visually recorded statements (all young witnesses can make a statement in the form of a video-recorded interview but only 55 per cent who gave evidence did so)
- assistance received before trial (44 per cent of young people neither met a supporter before trial nor had a familiarisation visit to the court before the day of trial)
- standards of questioning at court (in all, 65 per cent of young witnesses described problems of comprehension, complexity, questions that were too fast or answers being talked over)

- emotional support for young witnesses while they give evidence (two-thirds were accompanied by someone they had not met before).

The young people who gave their time to be interviewed for this study had made it to the end of a lengthy process that was, for many, distressing and disenchanting. Some gave evidence despite active intimidation and kept going because of a strong sense of "wanting to see justice done". Others had a better experience because they were supported, assisted to give their best evidence and thanked at the end of the process. Taken together, these young people's experiences provide valuable information about creating the conditions in which children's evidence can be tested robustly but fairly. Responding to what these young witnesses say will help overcome the fears of other young people who are unwilling to come forward.

Most difficulties encountered by young witnesses could be remedied by increased diligence in delivering existing policy commitments. In some instances, a fresh approach is needed to clarify responsibility for delivery of specific services and improve accountability through monitoring. Policies and children's experiences are discussed below, followed by proposals for action addressed to government departments, organisations and practitioners in England and Wales. In Northern Ireland, the Public Prosecution Service, Judicial Studies Board and the Northern Ireland Office Criminal Justice Policy Division are invited to address issues raised by the research in respect of young witnesses in their jurisdiction.

11.1 Offering support tailored to young witnesses' needs

Policies state that all young witnesses are entitled to support, tailored to their individual needs. Objectives include offering support from an early stage and enabling children to give their best evidence with as little stress and anxiety as possible. The role of a supporter accompanying a young person giving evidence is to provide emotional support and to reduce anxiety and stress. The supporter has no knowledge of the evidence and should be someone with whom the witness has a relationship of trust, ideally the person preparing the witness for court. On the day of trial, a trained child witness supporter will be there to help.

The proportion of young people receiving direct help before trial was disappointing:

- 50 per cent made a familiarisation visit to the court before the trial.
- 45 per cent met a supporter before the trial for the purpose of preparing them for court.
- 44 per cent had neither a familiarisation visit nor pre-trial contact with a supporter.

Young witnesses' experiences of support differed across court regions (see Appendix 3, below):

- 41 per cent of young witnesses in the Southeast and London regions had a pre-trial visit to the court, compared with 60 per cent of those in the Northwest and Wales regions.
- 39 per cent saw a supporter before the day of trial, compared with 67 per cent in the Southwest.

Pre-trial support made a great difference to the young witnesses who received it:

- 95 per cent of those who met a supporter before trial said this made them feel better about going to court.
- 84 per cent who visited the court before trial said this helped them feel more confident or know what to expect at trial.
- Over a third of children and parents said contact with a supporter before trial was what made it possible for the child to go to court.

Policies emphasise the benefits of continuity of support before and at trial and commend a flexible approach to the choice of supporter according to the needs of the witness:

- Children and parents described continuity as reassuring where it occurred, but parents reported that only 49 per cent of children who met a supporter before trial saw the same person on the day of trial.
- Two-thirds of children who gave evidence by live link were accompanied by someone they had not met before (overall, more than three-quarters of young witnesses had no choice about who accompanied them while they gave evidence).

Research studies have demonstrated that potential benefits to stress reduction can flow from the presence of a known and trusted supporter, improving recall and enhancing the quality of children's testimony. However, witness supporters indicated that decisions about who accompanied young witnesses while giving evidence were often determined by local custom rather than the needs of the individual child. Overall, more than three-quarters of young witnesses said they had no choice about who accompanied them while they gave evidence.

All witnesses are entitled to see their statement before trial to refresh their memory. However:

- 55 per cent of those who had made a visually recorded statement as their evidence-in-chief did not see it before trial.
- Most described the experience of seeing it for the first time at trial as difficult in some way. CPS policy indicates that the visit to the court "is a good time" to view the recording, but while the child's memory should be refreshed before the day of trial, the

study suggested that adding this task to the pre-trial court visit could result in information overload for many children.

- Young Witness Pack materials were designed to be used with the assistance of a supporter:

- 70 per cent of children received such booklets. Of these, 31 per cent were assisted to go through them by a supporter or police officer. These children were more likely to describe the material as helpful.
- Young victims of sexual or violent offences were no more likely to receive booklets than the sample as a whole, despite the *Code of Practice for Victims of Crime* (CJS, 2006).
- 13 per cent received the young witness DVD *Giving Evidence: What's it really like?*

11.1.1 Access to court familiarisation visits and witness support

Feedback from parents interviewed for the study indicated that 76 per cent of their children were offered a pre-trial visit to court and 49 per cent were offered face-to-face contact with a supporter before trial. The majority of offers were accepted. Some parents declined because they did not want their child reminded about court unnecessarily, or because the timing of the proposed court visit was not convenient or was difficult to reach. In interview, a few young people admitted concealing the extent of their worries about court from their parents, and some parents acknowledged that they had not appreciated how much a pre-trial court visit or contact with a supporter could have helped reduce their child's anxieties.

Witness support organisations in England and Wales rely on WCUs and police officers to "sell" the benefits of pre-trial court visits and support to young witnesses' families. The police MG11 witness statement form 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. The MG11 records whether the witness has opted out of referral to Victim Support/the Witness Service. However, some WCUs advised that the MG11 was seldom completed if the witness makes a visually recorded interview; that completion of MG2s for eligible children was inconsistent; or that witness care officers did not routinely have access to them.

Of the 52 witness support organisations and seven specialist young witness schemes surveyed for the research, 44 per cent did not receive systematic advance notice about all young witnesses, learning about some children only when they arrived at the trial. However, even if

parents did not consent to personal details being passed on, supporters needed advance notice of young witnesses' attendance to ensure appropriate staffing and other arrangements were in place.

Policy indicates that support is appropriate at all stages of the case. However parents indicated that, for those children who met a supporter pre-trial, 43 per cent did so for the first time within four weeks of the trial date. There was no general consensus on what would be the best time to start pre-trial support, but families should be made aware at an early stage that it is available if needed. For some, contact with a supporter several months before the trial had been an important reassurance and others would have welcomed earlier contact.

11.1.2 Assessing young witness needs

Levels of vulnerability among children in the sample were high:

- 79 per cent described themselves as worried or anxious in the pre-trial period.
- 52 per cent described experiencing symptoms of stress while waiting to go to court.
- 38 per cent of those in full-time education said their studies or attendance were affected (a few dropped out or had to change schools).
- In all, parents described 80 per cent of their children as having health or development concerns, experiencing stress symptoms or as intimidated.

The parents of 84 per cent of children indicated that some aspect of their child's needs and wishes had been discussed with them by criminal justice personnel. Some young people whose parents could recall no such discussion were among the most vulnerable in the study. Parents generally appeared willing to disclose personal information about their child (such as developmental difficulties) to criminal justice personnel where it was explained this would assist in planning to accommodate their child's needs.

11.1.3 Access to specialist young witness support

Specialist young witness services were important in assessing witness needs and persuading some parents of the benefits of pre-trial support for their child: 58 per cent of children who met a supporter before trial were seen by a specialist scheme. These young people reported receiving "individually tailored" pre-trial support. However, most Local Criminal Justice Board areas in England and Wales have no such specialist service, and although the Boards' three-year plan for 2008–2011 addresses victim and witness issues, these are not linked to specific targets and do not separately identify young witness concerns.

Evaluating young witness support (Plotnikoff and Woolfson, 2007a) was commissioned in part to "advise on key principles which might underlie any national procurement exercise for such services". No procurement exercise has been conducted but the Office for Criminal Justice Reform has now produced guidance based on the model of young witness support emerging from the 2007 evaluation (*It's In Your Hands: Guidance on setting up local services to support young witnesses* (2009). While this guidance is a welcome move, without some element of central funding, the prognosis for offering consistent and sustainable specialist services to all young witnesses remains guarded. Two of the nine young witness schemes that supported children taking part in this project ceased operation during the course of the research due to lack of funds.

11.1.4 Addressing standards of young witness support

The Children's Workforce Development Council (CWDC) was set up to support implementation of *Every Child Matters*, and issued induction standards in 2006 for employed and voluntary personnel working with children. These induction standards relate to essential principles and values, effective communication, child development and safeguarding children. National Standards for supporters and the NSPCC handbook for child witness supporters *Preparing young witnesses for court* (Plotnikoff and Woolfson, 1998) have not been updated to take account of *Every Child Matters* and CWDC standards.

The content of pre-trial preparation (for those who received it) was generally sound. However, there were some instances where young witness scheme practice did not accord with guidance, for example in relation to advice on pre-trial therapy. It was not always possible to determine what work was undertaken with young witnesses: some court-based Witness Services did not retain records post-trial.[143]

11.1.5 Recommendations

Office for Criminal Justice Reform

1. Invite Local Criminal Justice Boards to address young witness issues and link them to specific targets.
2. Clarify where responsibility lies for delivery of services tailored to young witnesses and how that delivery should be funded.

[143] Victim Support National Centre advises that this will be mandatory by 2009.

3. Include in statutory special measures the opportunity to have an independent supporter, known to the child, accompany young witnesses giving evidence.

4. Update National Standards[144] and guidance for young witness supporters, taking account of Children's Workforce Development Council induction standards and other recent policies.

5. Revisit delivery methods for Young Witness Pack[145] materials, and reinstate guidance explaining that the booklets are intended to be read with the assistance of a supporter who knows about court procedures who can then pass on information about the young witness's needs.

Association of Chief Police Officers and Police/CPS Victim and Witness Care Delivery Unit

6. Highlight the following in training for witness care officers and police officers, to ensure greater consistency of approach:

   6.1. Advise children and parents about the purpose of disclosing personal information which, although discretionary, is important in making arrangements for children.

   6.2. Advise children and parents about the benefits, as identified by most young witnesses, of seeing a supporter and visiting the court before trial.

   6.3. Renew offers of support or court visits that are declined before trial.

   6.4. Request information about exam times in "dates to avoid" for listing purposes.

   6.5. Alert the Witness Service ahead of time to young witnesses' attendance, to enable appropriate staffing and other arrangements to be made.

   6.6. Pass information about children's needs to others in the criminal justice process.

7. Include input from the Witness Service and any local young witness support scheme in such training on an ongoing basis, with the aim of promoting referrals for support and informing discussions with families about the benefits of support services and pre-trial familiarisation visits.

8. Review completion of MG11 and MG2 forms and whether these are routinely passed to WCUs.

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[144] Appendices F and G in Achieving Best Evidence in Criminal Proceedings (CJS, 2007).
[145] 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 and 0870 241 4680.

9. Review procedures for giving advance notice to witness support organisations about young witnesses.

CPS

10. Apply for a supporter known to the young witness to accompany him or her while giving evidence, based on the needs of the individual young person for emotional support
11. Review advice that the visit to the court "is a good time" for the young person to see their visually recorded statement for the purpose of refreshing (*Children and young people*, CPS, 2006, p14).
12. Monitor compliance with the commitment that a "trained child witness supporter" will be "there to help on the day of the trial" (*Children and young people*, CPS, 2006, p14).

Organisations supporting young witnesses

13. Tailor support to the needs of individual young witnesses, offering as a minimum: early contact to describe available services; a visit to the court before trial, including demonstration of live links and screens as appropriate; a home visit from a supporter; and help go through Young Witness Pack materials.[146]
14. Pass on witness needs and concerns as appropriate to criminal justice personnel as appropriate.
15. Aim to provide continuity of supporter before and at trial wherever possible and accompany the young witness while giving evidence, if requested by the young witness and permitted by the court.
16. Incorporate into training Children's Workforce Development Council induction standards.
17. Advise young witnesses and their parents that decisions about pre-trial therapy are the responsibility of the child and parent and that the child's best interests are the paramount consideration, as reflected in *Provision of Therapy for Child Witnesses* (CPS, Home Office, DH, 2001)
18. Record work for safeguarding purposes, maintaining a database to support active case management of referrals and serving the management information needs of funders, managers, Local Criminal Justice Boards and Local Safeguarding Children Boards.

[146] 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 and 0870 241 4680.

Department for Children, Schools and Families

19. Encourage Local Safeguarding Children Boards address young witness support arrangements, because of their strategic role in monitoring local agencies' activities to safeguard children.

11.2 Ensuring developmentally appropriate questioning at court

Policies expect questions to match children's age and abilities; that questioners will try to avoid misunderstandings; and that children will be allowed time to answer questions put in a systematic and logical sequence. Prosecutors should draw inappropriate questioning to the court's attention. The judiciary should be alert to witnesses who experience difficulties in understanding which, if not corrected, might detract from the quality of their evidence.

Bearing in mind that some young witnesses may be unable to say whether they had problems with questions at court, many of the 172 young people who gave evidence identified difficulties:

- 49 per cent did not understand some questions at court (this applied across all age ranges in the sample and is consistent with previous studies).
- In all, 65 per cent described problems of comprehension, complexity, questions that were paced too fast or having their answers talked over.
- Most of those who experienced problems with questions had been advised they could tell the court, but fewer than half actually did so
- A fifth of those who experienced problems with questions had been advised they could tell the court about a problem, but fewer than half did so.

Young people reported cross-examination techniques considered likely to produce inaccurate responses from children:

- 58 per cent said the defence lawyer tried to make them say something they did not mean or put words in their mouth; 44 per cent were asked repetitive questions; and 20 per cent were asked questions that jumped around in time.
- While some young people described challenges to their accounts that did not accuse them of lying, 57 per cent said they were accused of lying, usually more than once. "Telling the truth but not being believed" is regarded by children as one of life's most stressful occurrences and may cause a child to give inaccurate answers or to agree with the suggestion that they are lying simply to bring questioning to an end.

- 11 per cent of victims of sexual offences volunteered that they were asked to demonstrate intimate touching on their body. CPS guidance (2007) indicates this is "almost always inappropriate and unnecessary" (para 11).

According to young witnesses, the judges or magistrates did not always intervene when questioning was inappropriate or when communication problems arose, and interventions by the prosecutor were even less frequent.

The Bercow report (DCSF, 2008) highlights levels of communication problems among children in England and Wales that are higher than previously realised, even by teachers and child health professionals. There is also an overwhelming body of international research detailing the problems that children encounter when questioned at court. Findings of this study suggest that courts do not implement the lessons from these bodies of research.

All young witnesses are eligible to be considered for assistance from an intermediary (the "intermediary special measure" introduced by section 29, Youth Justice and Criminal Evidence Act (1999). Intermediaries are members of a panel comprising a range of disciplines, mostly speech and language therapists, whose expertise is available to assist communication when police officers and courts question certain categories of vulnerable witness. Based on the evidence of this study (taking together children who experienced problems with questioning but did not bring this to the attention of the court, those with underlying physical or developmental conditions and those who experienced stress symptoms that could affect the quality of their evidence), 70 per cent of children in areas where the intermediary special measure was available may have benefited from having their communication skills assessed by an intermediary. However, only one of these young witnesses had actually received an intermediary assessment; another was assisted by an intermediary at court in an area where the scheme had not formally been adopted.

The findings of this study indicate a gap between legislative intent underlying this special measure and receptivity of practitioners to recognise young witnesses' eligibility. They also highlight the need for judges and magistrates to set ground rules for questioning whether or not an intermediary is appointed: asking for information about the child's communication abilities and concentration span; inviting advocates to state what steps they are taking to ensure that questions are developmentally appropriate; and warning that if they fail to do so, the judge or magistrates will intervene.

11.2.1 Recommendations

Judicial Studies Board, CPS, General Counsel of the Bar, Criminal Bar Association, Law Society and Association of Chief Police Officers

20. Raise awareness of the extent of children's communication problems in the population as a whole and at court, with the objective of improving standards of questioning, controlling inappropriate questioning and ensuring that the intermediary special measure is used for eligible children.

CPS

21. Anticipate cases in which a victim of a sexual offence may be asked to demonstrate intimate touching on their body and discuss with the court the use of a body outline[147] or alternative method for eliciting this information.

11.3 Avoiding delays in young witness cases

Policy objectives include listing young witness cases quickly to reduce stress and ensure that events are fresh in the child's memory; avoiding adjournments; minimising waiting time before children give evidence; and starting their evidence in the morning while they are fresh.

Delays in court proceedings are linked to adverse effects on children's mental health, welfare and the quality of their evidence. Giving priority to young witness cases has been a frequently restated commitment since 1988 but its effectiveness is not monitored. In this study sample:

- Cases involving young witnesses came to trial more quickly than in previous studies but remained subject to pre-trial delay that was, on average, longer than that reported for all criminal cases.
- Trials involving over a third of young witnesses were re-scheduled once or more.
- 51 per cent of young witnesses in England and Wales began their evidence in the morning of the first day of their court attendance (8 per cent in Northern Ireland).
- The average actual waiting time in England and Wales was 3.5 hours at magistrates' or youth court (92 per cent waited more than one hour). At Crown Court, it was 5.8 hours (73 per cent waited more than two hours). Average actual waiting times in Northern Ireland were 6.3 hours in magistrates' or youth court and over 12 hours in Crown Court.

[147] See example at Annex B, *Good practice guidance in managing young witness cases and questioning children* (2009), www.nspcc.org.uk/research

- Waiting times for victim witnesses were no shorter than for non-victim witnesses, despite the *Code of Practice for Victims of Crime* (CJS, 2006).

- Of 40 special measures applications in England and Wales that were analysed in this study, 63 per cent were made out of time, with some being delayed until the day of trial.

The commitment to give young witness cases a fixed trial date has been dropped from court listing policy. 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 few young witnesses mentioned not being asked for their available dates, resulting in some trials being listed at exam time.

11.3.1 Recommendations

Office for Criminal Justice Reform

22. Invite Local Criminal Justice Boards to monitor the time to trial and waiting times at court in young witness cases

23. Collect and publish young witness statistics, including the number of young witnesses in the criminal justice system and the time their cases take to reach disposition.

HM Courts Service

24. Reinstate in the Criminal Case Management Framework (CJS, 2008) the commitment to give trials involving young witnesses an early and fixed date.

11.4 Considering special measures, taking account of young witnesses' views

Policies expect special measures to be explained to young witnesses, their views to be sought and recorded and account taken of views that change over time. All young witnesses are entitled to make a visually recorded statement, but those to whom the primary rule applies (witnesses in need of special protection in sex offence cases and those involving violence, kidnapping or neglect) must testify using visually recorded evidence and live link, with exceptions permitted only in the interests of justice.

This reveals a fundamental conflict between policies that seek young witnesses' preferences, and legislation that gives certain young people no choice by requiring them to give evidence by live link. WCUs are expected to conduct full assessments of witness needs. The WCU young witness checklist (use of which is discretionary) suggests issues to be addressed, including seeking young witnesses' views about special measures. Feedback from parents suggested that only half had been asked for their child's views about special measures, including the live link. WCUs and police officers reported being made aware of the views of even fewer of these children. The availability of the intermediary special measure did not appear to have been discussed with most children or parents in the areas of England and Wales where it was available.

All young witnesses are eligible for special measures to assist them to give evidence. In all, 88 per cent of those who gave evidence were the subject of applications:

- 75 per cent used the live link; 13 per cent gave evidence in court, screened from the defendant; and 12 per cent gave evidence in open court without a screen.
- 82 per cent were content with arrangements for them to give evidence and 39 per cent would have been unwilling to give evidence any other way.
- 15 per cent did not give evidence the way they wanted.
- Most appreciated giving evidence by live link, but 9 per cent using it found the room claustrophobic or were upset that they could be seen by the defendant and those in the public gallery. Of those using the live link:
    - 13 per cent had practised on a live link at a familiarisation visit.
    - 40 per cent of those who knew the defendant could see them over the live link learned this for the first time on the day of trial.
    - 12 per cent saw the defendant on the live link screen.
- 40 per cent of those who testified in the courtroom were unhappy about it. Some gave evidence in court because of live link failure; some did so in open court because screens were not available, even though a screens application had been granted.
- Not counting those giving evidence in the youth court which is closed to the public, 41 per cent appear to have been eligible for the special measure permitting the public to be excluded from the court. The measure was actually used for one of these witnesses.

- 40 per cent of those who gave evidence described problems with equipment or in playing their visually recorded statements.[148]
- Policy indicates that all child witnesses are able to make a statement in the form of a visually recorded interview: 55 per cent of children in the study had done so, compared with 42 per cent of those who were aged 17 or over by the time of trial.

The failure to record the police interview for witnesses who were under 17 when offences were reported is a missed opportunity, because the existence of a recording extends young people's eligibility to use the live link if they have reached their 17th birthday by the time of trial, even if the recording is not played as their evidence-in-chief. On the whole, the 17 year-olds interviewed for the study were similar to the sample as a whole in respect of anxieties about court, stress levels and intimidation, and those who gave evidence in open court included some who described themselves as intimidated.

Special measures were least used for young witnesses in the Southeast and London regions, compared with other court regions (see Appendix 3, below):

- 43 per cent made a visually recorded statement, compared with 68 per cent in the Northwest.
- 60 per cent of those who gave evidence did so over the TV link, compared with 91 per cent in the Northwest.

11.4.1 Recommendations

Association of Chief Police Officers

25. Increase the number of young witnesses making visually recorded statements.

Association of Chief Police Officers, Police/CPS Victim and Witness Care Delivery Unit and organisations supporting young witnesses

26. Enable young witnesses to express an informed view about special measures and ensure they know that everyone in the courtroom, including the defendant, can see them over the live link.
27. Ensure young witnesses' views about special measures are passed on to others in the criminal justice process.

[148] HM Courts Service has instituted a rolling programme to replace and upgrade technical equipment.

CPS

28. Ensure special measures are considered for all young witnesses, taking account of their views, and that applications are made within time limits so that young witnesses can be informed of decisions before the day of trial.

Office for Criminal Justice Reform

29. Extend automatic eligibility for special measures to those aged 17.
30. Review policy that restricts practising on the live link to witnesses for whom applications have already been granted, contained in Achieving Best Evidence (CJS, 2007, section 5.22).
31. Produce an explanatory leaflet for children about the intermediary special measure.

HM Courts Service

32. Monitor the frequency of technical problems as part of the overall programme for maintaining and upgrading equipment.
33. Check that all equipment is working satisfactorily and that the defendant cannot be seen on the TV screen before the young witness enters the live link room.

11.5 Helping young witnesses feel safe

Policy objectives include ensuring that young witnesses are kept separate from defendants and their supporters throughout the court building and limiting opportunities to encounter them when entering and leaving. Waiting rooms should be clean and comfortable, containing suitable material for children of different ages. Witnesses should perceive courts as a place of safety. They may be allowed to wait near the court on standby.

Safety before the trial and at court was a concern for a significant minority of young witnesses:

- 20 per cent described themselves as intimidated in the pre-trial period and 15 per cent were afraid to go out.
- Parents described 25 per cent of children as intimidated by the defendant, his family or friends. Many were dissatisfied with the way pre-trial intimidation had been dealt with by the police, both in respect of bail conditions and more generally.

- 52 per cent were met at the public entrance by an official escort or were brought in through a rear or side entrance of the court and 92 per cent were directed to a separate waiting area on arrival, but 45 per cent saw the defendant in the court building or while entering or leaving, often causing anxiety and distress to the witness.
- 5 per cent recalled being offered the opportunity to wait on standby away from the court.
- In the views of parents, security at court was handled "very well" for 33 per cent of their children; "quite well" for 19 per cent; but "not well" for 35 per cent of young witnesses.

Even after reaching secure waiting areas, court design sometimes meant that witnesses had to re-enter public areas to go to the toilet, buy refreshments or reach the live link room (some of which appeared unfit for this purpose due to inadequate soundproofing or comfort). Avoiding the defendant sometimes meant coming to court earlier than strictly necessary and being confined for a long time in uncomfortable conditions (41 per cent of children had nothing to do while waiting, or at least nothing they considered age-appropriate).

HM Inspectorate of Court Administration sees great benefit in increased use of remote link facilities, particularly for witnesses who fear intimidation, but has found a "lack of proactive consideration of how best video links could be used to reduce the stress on witnesses" (para 4.21, 2006). More than 50 per cent of courts can now link to another court or a non-court remote site.[149] In this study, 7 per cent who gave evidence by live link did so from a remote site; at least one other child (a seven year-old) was refused permission to do so. Using a live link at a different court overcomes problems of witness intimidation or confrontation with the defendant but waiting facilities at the host court may still be unsatisfactory.

Introductions to people at court were valued: 69 per cent of children who gave evidence met the prosecutor before the trial started, compared with 8 per cent who met the judge or magistrates. Depending on the needs and wishes of the child, the importance of an introduction to the judge in person (not just the customary live link introduction) may outweigh the benefits of remote link use because of rapport-building. However, this requires advance knowledge of the trial judge's identity and that judge's practice concerning meeting young witnesses.

[149] Protocols governing use of such links have been agreed by 11 government departments and non-governmental organisations: http://frontline.cjsonline.gov.uk/_includes/downloads/guidance/better-trials/Live_Links_Protocols.pdf

11.5.1 Recommendations

Association of Chief Police Officers

34. Improve the response to young witnesses who report intimidation.

HM Courts Service

35. Consider how the security and comfort of court arrangements (including access to toilets and refreshments) and soundproofing in live link rooms could be improved.

36. Develop a score based on these factors, to identify court buildings where layout constraints suggest that availability of an offsite remote link should be a priority.

CPS

37. Encourage greater use of standby arrangements to minimise witness waiting time at court, and use of remote links at trial courts with less satisfactory waiting facilities and security arrangements.

11.6 Safeguarding young witnesses as a collective responsibility

Every Child Matters (DfES, 2003) provides a new outcomes framework for assessing children's experiences in the English criminal justice system, including safeguarding and promoting their welfare and enabling them to make a positive contribution.

The term "safeguarding" is generally associated with child protection but a wider definition has been adopted which the Secretary of State for Children, Schools and Families describes as covering "all the things we need to do to keep children safe and promote their welfare".[150] In 2005, *Safeguarding Children: the second joint Chief Inspectors' Report on Arrangements to Safeguard Children* concluded that a key area for improvement involved "bringing together existing elements of safeguarding policy and practice into overarching strategies" for the CPS and courts (para 6.42, Commission for Social Care Inspection et al, 2005). Since 2005, the CPS has risen to the challenge and given safeguarding a high profile in its policies. There is, as yet, little evidence of the "overarching" approach the Inspectors called for in respect of courts. Local Criminal Justice Boards have a role in promoting multi-agency protocols covering responsibilities to young witnesses but in a survey for this study, only 17 of 52 Witness Services and five of seven young witness schemes (37 per cent in all) reported being parties to such agreements.

[150] Introduction, Staying Safe: a consultation document (DCSF, 2007).

Aspects of safeguarding that fall outside the remit of the Inspectorates should be discussed with the judiciary. The Chief Inspectors have warned that they could provide only a partial picture of how well children were safeguarded at court because their remit did not extend to the exercise of judicial discretion (para 6.2, Commission for Social Care Inspection et al, 2005). In 2006, HM Inspectorate of Court Administration proposed that "HM Courts Service needs, in consultation with the judiciary, to develop consistent witness care procedures that take account of the needs of children, while being in accordance with the interests of justice" (para 4.19, *Valuing Victims and Witnesses*, HM Inspectorate of Court Administration, 2006).

11.6.1 Recommendations

Office for Criminal Justice Reform

38. Invite Local Criminal Justice Boards to address the "safeguarding children" agenda (as set out, for example, in CPS policies), and to promote the development of multi-agency protocols clarifying organisations' responsibilities to young witnesses and local arrangements for the management of young witness cases.

HM Courts Service

39. Bring together and publish its young witness policies under the safeguarding "umbrella", as done by the CPS.

40. Agree with the judiciary a package of "consistent witness care procedures", as recommended by HM Inspectorate of Court Administration in *Valuing Victims and Witnesses* (2006, para 4.19).

11.7 Listening to young witnesses about their experiences

Policies emphasise the importance of consultation with young witnesses to seek and use their views, encouraging confidence in the criminal justice system and helping children feel safe.[151] However, parents and young people felt they had little opportunity to give feedback to criminal justice personnel:

[151] For example, para1.9, *Safeguarding Children* (HM CPS Inspectorate, 2008); *Increasing Victims' and Witnesses' Satisfaction in the Criminal Justice System (*Office for Criminal Justice Reform, 2004); and para 3.5, *Youth Crime Action Plan* (Home Office, 2008).

> "She was only six at the time [of the offence] and she's only eight now. It was terrible really. You can see why people are tempted to turn a blind eye and not report things. When it's over, they don't ask 'What it was like for you?'" (Parent)

Despite policy emphasis on consulting young witnesses, the government has no mechanisms to obtain feedback from those under 16. This study suggests that valuable lessons can be learned from what young witnesses can tell us. Many were keen to provide input, especially if it might result in other children receiving an improved service.

More should be done to recognise the contribution of young witnesses (if appropriate, without publicity) in accordance with the *Every Child Matters* aim to improve outcomes for children by enabling them to "make a positive contribution". Only one of 182 witnesses interviewed for this project received an award by way of official recognition.

11.7.1 Recommendations

Office for Criminal Justice Reform

41. Produce a card or leaflet summarising key entitlements for young witnesses, including special measures and what they can request if not offered, such as seeing their statement and visiting the court before trial. This should end with a space for Local Criminal Justice Board contact details and inviting young people's feedback on their experience as a witness, whether good or poor. A written invitation to provide feedback should also be given to young witnesses, whether or not they were required to testify.

42. Explore ways to use awards (where appropriate, without publicity) to acknowledge the contribution of deserving young witnesses.

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Appendix 1 List provided by HM Courts Service of projects impacting on young witnesses

- In 2005-08 HM Courts Service (HMCS) invested over £3.4m on improving accommodation facilities at courts for victims and witnesses. This included £340,000 invested in 2005-06 to be shared in every Crown and Magistrates' Court specifically for improving facilities for child witnesses. Local areas have used the money to improve facilities in both Crown and Magistrates' Courts to ensure safety and comfort. Examples of work achieved include:
    - Many courts have purchased TVs/Gameboys to keep children entertained whilst waiting.
    - One court chose to involve the local community in improving its accommodation by holding a painting competition with local comprehensive schools – the winning picture was framed and displayed in the waiting room.
    - Courtroom layout maps have been supplied in waiting rooms in many court rooms so that child witnesses and their supporters can find their way around the court building easily.
    - Toy boxes, games and books have also been purchased to provide children of all ages with activities while they wait.
    - Window blinds, internal communication systems and door locks installed in many courts.
    - All of these improvements are intended to ensure that whilst child witnesses are waiting at court, they are in a safe, secure and comfortable environment, which is a central strand of the HMCS strategy for victims and witnesses.
- HMCS launched the 3rd edition of the revised *Every Witness Matters* Employee Handbook in early 2009. The handbook provides staff who have day to day responsibility for victim and witness care with a consistent reference point on everyday witness care issues. It includes a section on the extra support which should be given to child and young witnesses at court.

- HMCS can make arrangements with the parents/supporters of child witnesses for the Witness Service to meet them at the main entrance to the court building at a pre-arranged time to escort them to the waiting rooms. If facilities allow arrangements can be made to meet them at a separate entrance to the court building away from the main public entrance.

- Arrangements can also be made for young witnesses to wait separately to reduce the chance of them coming into contact with the other parties and their supporters.

- HMCS has drafted guidance for court staff on implementing the *Code of Practice for Victims of Crime* (CJS, 2006) published in early 2009. The guidance tells court staff how they can meet their Code obligations to vulnerable victims including young victims and provides good practice examples. It also breaks these duties down by court duty eg court clerk, usher etc.

- HMCS and OCJR have drafted guidance for court staff on implementing *The Witness Charter* (CJS, 2008b). The guidance tells court staff how they can meet Charter standards, including for young witnesses and monitoring suggestions. These include Standards 13, 14 and 26.

- A Witness Liaison Officer has been appointed in all courts who will assist in co-ordinating the provision of facilities and providing a focal point for liaison with other agencies. Local practices vary but duties may include pre-trial familiarisation visits, liaising with the judge to ensure that the cases progress speedily and undertaking the practical arrangements on the day of trial. For example, ensuring that the video and TV link equipment is set up and working effectively, meeting the witness and arranging separate waiting areas where possible. The purpose of this service includes providing parents and young witnesses with a consistent member of court staff, throughout the court process.

- Area Witness Champions have been appointed in each HMCS Court Area. Their purpose is to ensure that the needs of all witnesses, including child witnesses, are consistently applied across their HMCS Area. Their role was established in October 2005. The role of the Area Witness Champion is to:

    - Champion victim and witness issues.

    - Plan and monitor local service provision with other local criminal justice agencies, including voluntary organisations and defence practitioners.

  - Share good practice.
  - Act as a champion for victim and witnesses on the Local Criminal Justice Board.

- Quarterly newsletters are sent to AWCs which updates them on relevant policy and strategy developments and good practice examples. An annual conference for AWCs is held which enables them to network, to meet and listen to other CJS personnel and to participate in workshops.
- HMCS has produced a DVD – *Going to Court: A step by step guide to being a witness*, which was launched throughout England and Wales at the end of September 2007. The DVD is an interactive, multilingual, animated DVD designed especially to help adult victims and prosecution, older teenagers, parents/carers and defence witnesses understand their role in the court process. It is an easy to follow animation seen through the eyes of a witness. It explains what to expect throughout the court process and follows the journey a witness makes from making a statement through to after the trial. In particular, the aims of the DVD are to: improve victim and witnesses understanding of their responsibilities; improve victim or witness attendance at court; and improve witness confidence and satisfaction in the criminal justice system.
- New information leaflets have been developed for both prosecution and defence witnesses by the Witness Improved Services Programme (WISP) consultative and delivery groups. These local leaflets (available electronically since the end of September 2007 on the HMCS Website under "CourtFinder" www.hmcourts-service.gov.uk/HMCSCourtFinder/) provide information on the services and facilities available at courts for witnesses, including older teenagers, and parents and carers of young witnesses. The leaflets include information about whom to contact at the court, what to expect on arrival and what happens after they have given their evidence. They are available in a range of languages to assist those witnesses where English is not their first language.
- Witness Improved Services Programme – Stakeholder Consultative Group (WISP SCG). This group has been set up to suggest and implement improvements to HMCS-delivered services and drive through the initiatives set out in the Department's *Every Witness Matters* strategy. The group is made up of representatives from across HMCS, a number of CJS agencies, including OCJR, CPS and the police and other organisations such as Victim Support and the Law Society. This membership ensures that the group can ensure

that the services to victims and witnesses within HMCS complement and dovetail with those provided by other agencies. The group ensures that HMCS practices and procedures are informed by the needs and expectations of victims and witnesses, including young witnesses.

- The Delivery Group brings together individuals from the field from within HMCS to assess the feasibility, affordability and effectiveness of the measures proposed by the consultative group. It also considers the methods and mechanisms for securing culture change to embed the needs and expectations of victims and witnesses, including young witnesses, at the heart of HMCS's service delivery objectives.
- *Criminal Justice Simple, Speedy, Summary* (CJSSS) was implemented across England and Wales for all adult charge cases in 2007. By working together criminal justice agencies have helped provide a service that is focused on improving public and victim and witness confidence in criminal justice. CJSSS has contributed to national improvements, as shown in the September 2008 *Time Interval Survey* when compared to the year to March 2007:
    - Timeliness – a 21 per cent improvement in the time from charge to completion, from 61 to 48 days.
    - Guilty pleas disposed on in one hearing – a three percentage point improvement from 65 per cent to 68 per cent.
    - Disposal of contested cases – a 12 percentage point improvement in the number of contested cases disposed of in two hearings (from 26 per cent to 38 per cent) and a 13 per cent percentage point improvement in the number of contested cases disposed of in three hearings (from 47 per cent to 60 per cent).
- CJSSS is currently being implemented in youth courts across England and Wales, with all areas fully live in the spring of 2009.
- WiFi equipment has been installed in all Crown Courts. Victims and Witnesses or parents/carers in these courts will therefore be able to get access to the Internet via their own laptop computers.
- Working with the HMCS Victim and Witness Liaison Judge, HHJ Cahill QC, to develop stronger links with judiciary.

- Working with Witness Service to develop a joint training module for ushers and Witness Service volunteers in supporting witnesses at court.
- New witness waiting times targets have been approved and introduced with the aim of reducing witness waiting times.
- A £2.75m replacement programme took place in 2007/08 to replace older video links with more modern equipment to allow for more flexible use, ie remote links. 42 Crown Courts (74 courtrooms) and 19 Magistrates' Courts (20 Courtrooms) received new equipment. Old style TV monitors were replaced with modern plasma screens to improve the quality of the evidence viewed. DVD players and S-Video leads have also been installed to make it easier to present evidence in court in digital format. A further £1.835m programme of replacement of older equipment in approximately 56 Crown Courtrooms took place between January and March 2008. Amongst other benefits, the new equipment can easily be upgraded to allow videoconferencing links to be made. These enable evidence to be given remotely, which will mean that victims and witnesses will not have to go to the courthouse where the trial is being held, but give evidence from another location. A further programme of works to replace existing equipment/install new equipment in both Crown and Magistrates' Courts will be completed by December 2009. The project has a limited budget of £2m and under current plans will deliver equipment in 43 Crown Courtrooms and 29 Magistrates Courtrooms. A further programme of improvement work for 09/10 is in the early stages of development.

Appendix 2 Research design

Overview

Criminal justice projects routinely confine fieldwork research to five or six sites. Where courts and "local legal culture" are concerned, however, this may result in findings being downplayed as not being typical of experience elsewhere. This study aimed to conduct the first truly national survey of young witnesses by interviewing 200 young people and their parent or carer across England and Wales and Northern Ireland. The study hoped to interview 180 prosecution and 10 defence witnesses in England and Wales and 10 (later, 15) prosecution witnesses in Northern Ireland.[152] By the end of fieldwork, 216 young people had been referred to the project and 182 had been interviewed:

Table 12 Numbers of study referrals and interviews

	Referred for interview	Interviews with young witnesses	Interviews with a parent or carer
Prosecution witnesses E & W	199	167	158
Prosecution witnesses NI	15	15	14
Defence witnesses E & W	2	0	0
Total	**216**	**182**	**172**

Thirty-four referrals to the project did not proceed to interview:

- For eight children, referring organisations thought that they had given evidence. Parents told us this was incorrect when we called, therefore no interview was scheduled.
- Fourteen did not proceed because parents or young people did not wish to take part when called.
- For ten, no interview took place because families could not be contacted.

[152] Four children from Northern Ireland were included in *In their own words.* (Plotnikoff and Woolfson, 2004). Criminal Justice Inspection Northern Ireland recommended that agencies 'devise an action plan to address the issues specifically raised': *Improving the provision of care for victims and witnesses within the CJS in Northern Ireland* (2005).

This project aimed to interview young people who gave evidence but WCUs (the primary source of young people referred for interview) were often unsure whether witnesses had actually testified. Ten interviewees in this study attended trials and WCUs believed they had given evidence but the fact that these children did not testify did not emerge until interviews with them were underway. (Although the situation of witnesses who attend court but do not testify was not addressed by the aims of the study, these interviews nevertheless provided useful information.) At least 50 other calls from WCUs concerned witnesses who attended court but did not testify: where we identified this in discussion with the WCU, these were not logged as referrals and the children concerned were not approached for interview. However, it was clear from the volume of these calls that many children at court only learn that they will not give evidence at the last minute. Given criminal justice objectives to avoid unnecessary court attendance, the experience of such witnesses should be the subject of further enquiry.

Prosecution witness referrals

Witness Care Units

In June 2006, while the project was in the planning stages, the central *No Witness No Justice* project team wrote to all WCUs to request their help: 55 each agreed in principle to refer up to five young witnesses for interview. By the time the project began in May 2007, around three-quarters of participating WCU managers had changed[153]; initial central funding for WCUs had ceased (resulting in loss of staff positions in some areas); and WCUs were taking on implementation of the Criminal Justice Simple, Speedy, Summary (CJSSS) initiative.[154] Some WCUs which initially agreed to participate had to withdraw but others joined once the study was underway. By the end of fieldwork, a total of 74 WCUs had agreed to participate, including three British Transport Police WCUs (each of which covered a region of the country). In all, 174 referrals were received from 43 WCUs, 27 per cent of the total number of 160 WCUs across England and Wales as of April 2008.

Findings that WCUs did not always "act as a single point of contact" for witnesses are described in section 2.3 above. The research design was based on the premise that WCUs would act as the sole source of young people referred for interview. However, 40 out of 74

[153] Turnover continued to be high throughout the project and necessitated new managers in post being briefed about the project.
[154] See Delivering Simple, Speedy, Summary Justice (Ministry of Justice, 2006).

participating WCUs indicated that, while they dealt with some young witnesses, 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.

Other sources of prosecution witness referrals

- Ten referrals were obtained from police specialist teams in Bedfordshire, Thames Valley and West Midlands which retain direct contact with their own witnesses.[155] These resulted in seven interviews.
- Five were received from Victim Support's Nottinghamshire young witness service which liaises with young witnesses on behalf of local WCUs, resulting in four interviews.

When it seemed likely that the project would not reach its target of 200 interviews, additional efforts were made to boost referrals. We were in regular phone and email contact with WCUs. Emails to participating WCUs in January and July 2008 from the No Witness, No Justice team resulted in temporary increases in referrals.[156] An item was placed in the Local Criminal Justice Board (LCJB) newsletter in July 2008. Specific steps were taken in an attempt to increase the number of referrals from London, including group and individual meetings with WCU managers, liaison with the London Criminal Justice Board, and an (unsuccessful) exercise in which witness supporters at the Old Bailey were asked to invite young witnesses to participate. Despite this, efforts to boost the number of London referrals were unsuccessful.

Defence witness referrals

The project aimed to conduct interviews with 10 defence witnesses, with the object of exploring any difficulties they experienced in accessing support services[157] to prepare them for court and in obtaining special measures to help them give evidence.[158] The Public Defender Service, Law Society, CPS and Criminal Bar Association advised us that, in their experience, defence practitioners are very reluctant to call young witnesses. Cautious

[155] We also approached St Mary's Sexual Assault Referral Centre, Manchester, which offers a programme of witness support. While St Mary's was willing to assist in principle, they were unable to identify any young witnesses due to give evidence within the timespan of this study.
[156] We are grateful to Chief Superintendent Simon Deacy and Pauline Spencer, *No Witness No Justice* police and CPS leads, for their assistance.
[157] In the survey of support organisations, only 27 of 52 Witness Services (52 per cent) and three of seven young witness support schemes (43 per cent) had supported a defence witness in the previous six months.
[158] Although eligible, it appears that applications for special measures are seldom made on their behalf (Burton et al, 2006).

estimates indicated that in 2007, only 304 young defence witnesses were expected to attend Crown Court and 2,283 to attend youth or magistrates' court.[159] This would account for only 13 per cent of the estimated 20,410 young witnesses expected to attend court. Victim Support National Centre does not record separate statistics about young defence witnesses supported by the Witness Service but reported in 2006 that defence witnesses overall represent only 2 per cent of those it deals with. [160]

Steps taken to elicit defence referrals included requests placed in the Law Society's *Professional Update* e-bulletin (which goes to thousands of solicitors in criminal practice) and on www.criminalsolicitor.net; a meeting with managers of four Public Defender Service offices; letters to over 40 defence solicitors, including members of committees of the Criminal Law Solicitors Association and the London Criminal Courts Solicitors Association; and distribution of project flyers at a solicitors' conference. Victim Support London was unable to assist with our request to allow researchers to attend London youth courts in the hope of identifying young defence witnesses at court with the assistance of the Witness Service.

Regional profile

The project aimed to conduct interviews across all seven court regions of England and Wales.

Table 13 Number of young witness interviews by region

Regions	Number of interviews	Percentage of total interviews
North West	25	14
North East	26	14
Midlands	50	28
Wales	5	3
South West	15	8
South East	38	21
London	8	4
Northern Ireland	15	8
Total	**182**	**100**

[159] *Estimated numbers of witnesses in court system annually*, Economics and Statistics Division, HM Courts Service. These estimates are based on twice yearly surveys. The table notes that child witness estimates are based on small sample sizes and should be treated with extreme caution.
[160] Email to the authors from Victim Support National Centre, 27 November 2006.

For the purpose of regional comparisons in this report, totals for London and the South East have been combined (see Appendix 3).

The approach to WCU aspects of the research design

Project guidance requested WCUs to adopt a systematic approach to identifying young witnesses and inviting their participation in the study. They were asked not to "cherry pick" cases but to contact the parent/carer of *all* young witnesses who had given evidence after an agreed start date, until at least five witnesses had agreed to be interviewed.[161] Interviewees could come from the same case or family. It was hoped that the small number of referrals requested from individual WCUs would increase the likelihood that they would respond.

All WCUs were given project guidance and managers of 59 out of 74 participating WCUs were briefed in person. Despite the emphasis on a systematic approach, once the project was underway many managers acknowledged that their teams used ad hoc methods to identify eligible witnesses. Several were unwilling to approach the parents of young people who gave evidence in particularly sensitive cases, where children were looked after by the local authority or where they "had a bad time at court". One WCU told us of a robbery case with 10 young witnesses who attended for trial twice in the magistrates' court. On the second occasion it was decided to transfer the trial to the Crown Court. The WCU did not invite these witnesses to take part in the study "as the delays and mix-ups had been so traumatic for them".

The preferred time to request participation was when WCUs called families to communicate trial outcomes. Several WCUs reported being weeks in arrears in receiving this information from courts, so time had often elapsed before some families were asked to take part in the study. Some WCUs trawled through previous cases to find interviewees, rather than monitoring completion of current trials as requested. One WCU had difficulty explaining about the project by phone as it did not always have a phone contact for families in young witness cases.

[161] WCUs were asked not to select witnesses on the basis of their good or poor experiences at court or to exclude those with little or no English or with speech or learning difficulties as these could be accommodated at interview.

The approach to young witnesses

The approach to young people for research purposes is the subject of extensive ethical guidance.[162] The invitation to participate usually comes via a third party and "informed" consent is required before contact details are passed on to researchers. The ethics protocol for this study was scrutinised by the NSPCC's research committee, three independent reviewers and the Research Group of the Association of Directors of Children's Services. The protocol required WCUs to:

- explain the project to parents according to a script provided by the project
- send explanatory letters to parents and children if parents expressed an initial interest in taking part in the research (stamped envelopes containing these letters were provided to all participating WCUs)
- call back a few days later to ask whether contact details, personal and case information could be released to the researchers.

This multi-step process was more cumbersome for WCUs than simply asking families if they wished to take part. While "opt-in" research can be more respectful of people's privacy than "opt-out', where the invitation to participate comes via a third party, as in this study, barriers are created that make it harder for researchers to contact certain hard-to-reach groups (Alderson and Morrow, 2004).

Almost all interviews were conducted within four weeks of the referral. Before face-to-face interviews began, interviewers asked parents to sign a consent form explaining the purpose of the research, the type of information sought from themselves, the WCU and any witness supporter; and what to do if they had questions or concerns. A copy of the form was left with them. Research interviews were not recorded as this might have recalled the formal recording of police investigative interviews. However, at the end of the research interview, children were invited to record a comment about their experience as a witness (69 did so). The consent

[162] This project's ethics protocol drew on advice from Professor Harriet Ward, Director of Child and Family Research, Loughborough University, and the following sources: Government Social Research Unit Professional Guidance, *Ethical Assurance for Social Research in Government,* 2005; Alderson and Morrow, *Ethics, Social Research and Consulting with Children and Young People,* 2004; Barnardos; Association of Directors of Social Services *Research Group Guidelines,* (undated); Barnardo's *Statement of Ethical Research Practice* (undated); British Psychological Society, *Ethical Principles for conducting Research with Human Participants* (undated); NSPCC, *Research Ethics Checklist and guidance on the Ethical Review Process*; Sussex Institute, University of Sussex (undated) *Standards and Guidelines on Research Ethics,* (undated); Social Research Association, *Ethical Guidelines,* 2003; Social Research Association, *Data Protection Act 1998 Guidelines for Social Research,* 2005; and Institute for Employment Studies, *RESPECT Code of Practice for Socio-Economic Research,* 2004.

form covered this and promised that any recording would not identify the child and would be used only in judicial and criminal justice training.

A parent or carer was present at interview with 169 young interviewees (93 per cent) and a supporter was present with three (2 per cent). The remaining young people opted to be seen on their own: all were aged 15 and over. Two children were looked after by a local authority; four were the subject of care proceedings in the family court as a result of the offence. A parent or carer provided information in respect of 172 young people (95 per cent) in the sample.[163] For the sake of brevity, their responses are described in the report as those of "parents".

The referral process, approach to witnesses and interview schedules were revised following pilots in three WCU areas.[164] The interview was designed to reinforce the positive contribution made by young people in carrying out their role as a witness. Young people were given illustrated and laminated cards for each group of questions. These included some closed questions (such as "How long did you wait to give evidence at trial?") but many were open-ended (for example, "When they asked me questions, I felt…"). The interviewer completed a form with tick boxes for responses made most frequently in previous studies and with space to record key comments and quotes in the child's own words. A similar form was used for interviewing parents, though some parents opted to complete it themselves rather than in response to questions. The forms enabled the interviewer to focus on the interviewee; avoided the need for a verbatim note or transcription of recordings; reduced inconsistencies in note-taking across the team as a whole (Armstrong et al, 1997); and assisted data analysis.

All but two interviews with young people were conducted in person in their home. Two were phone interviews: one with a boy in the Army and the other with a boy who declined a visit but who wished to participate. All interviewees received a certificate and a £5 gift voucher.

An SPSS database was developed to record information from child and parent interviews, together with that provided by WCUs and supporters (see below). Altogether, over 470 pieces of information per young witness could be recorded.

Young witnesses and their parents were asked if they would like to receive a summary of the research on its completion; 104 (57 per cent) said they would.

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[163] Parental interviews were conducted for 158 children in England and Wales and 14 of 15 of the young witnesses living in Northern Ireland.
[164] The first dealt with some young witnesses at all levels of court; the second dealt with some young witnesses, in magistrates' and youth court only; and the third dealt with all young witnesses, in magistrates'/youth court only.

All interviewers underwent enhanced Criminal Records Bureau checks for this project. They also complied with NSPCC personnel procedures and provided professional references.

Where necessary, interviewers followed up on queries from children and parents in respect of referrals for therapeutic support, payment of court-ordered compensation and eligibility for Criminal Injuries Compensation.

Information from criminal justice sources

Witness Care Units

The project sought to "triangulate" information from children and parents with data from WCUs and supporters from the court-based Witness Service or young witness schemes. Three pilot WCUs recommended that data about the witness and case be provided at the point of referral while information was readily accessible. WCUs were therefore asked for personal information about the witness and case by telephone, and to complete an anonymised email referral form identified only by the project case number. This form included details about special measures applications and the WCU's assessment of witness needs.

WCUs were asked to make five referrals each, and to log information about young witnesses whose parent declined to participate in the study (witness age, gender, type of offence, victim status, level of court, trial outcome and reasons for declining). The aim was to enable comparisons to be made with the interview sample. However, only three WCUs returned this log, either after making five referrals or when requested to do so at the end of the project. It was therefore not possible to take forward this aspect of the research.

CPS

The CPS provided information from 13 WCU witness assessment forms to supplement information from project referral forms.

Witness supporters

Generic information was received from seven specialist young witness scheme managers and 52 Witness Service managers (some of these managed services at more than one court). Some Witness Service managers could not provide child-specific information as they did not retain

details concerning individual children[165] but this type of information was obtained from Witness Service and young witness scheme supporters in relation to 108 witnesses (63%) of 172 children who gave evidence.

Other sources of information

In the course of the study, discussions about the general approach to young witnesses were held with four representatives of CPS; three child protection teams and six police officers and administrators; 30 members of Victim Support/Witness Service; members of two NSPCC young witness schemes; two members of Salford City Council Witness Outreach Service; two registered intermediaries; a child advocate at St Mary's Sexual Assault Referral Centre, Manchester; and the head of youth justice strategy at a Local Criminal Justice Board.

[165] Victim Support's *Guidance on Confidentiality and Information Security,* 2006 suggests that case records should be kept for six years. Victim Support National Centre advises that this guidance will be mandatory by 2009.

Appendix 3 Regional comparisons

	Region							
	Northwest	**Northeast**	**Wales**	**Midlands**	**Southwest**	**Southeast & London**	**Northern Ireland**	**All regions**
Number of young witnesses interviewed	25	26	5	50	15	46	15	182
Percentage of those interviewed who made a visually recorded statement	68%	62%	60%	52%	60%	43%	60%	55%
Percentage of those interviewed who had a pre-trial visit to the court	60%	31%	60%	56%	53%	41%	67%	50%
Percentage of those interviewed who saw a supporter before the day of trial	40%	42%	60%	34%	67%	39%	80%	45%
Number of young witnesses interviewed who gave evidence	23	23	5	49	14	43	15	172
Percentage of those giving evidence who did so over the live link	91%	78%	80%	73%	86%	60%	80%	75%

Appendix 4 Profile of witnesses

Geographical spread

In all, 170 young interviewees were called to give evidence by the prosecution at 23 Crown Courts, 22 magistrates' courts and 22 youth courts sitting at 62 locations in England and Wales; 12 gave evidence at seven Crown Courts, four magistrates' courts and one youth court in Northern Ireland.

Gender and age

There were 101 female interviewees (55 per cent); 81 were male (45 per cent). Their mean age was 14.3 years at the time of trial, with the breakdown[166] as follows:

- five were aged from 5 to 7 (3 per cent)
- 11 were aged from 8 to 10 (6 per cent)
- 32 were aged from 11 to 13 (18 per cent)
- 67 were aged from 14 to 15 (37 per cent)
- 67 were aged from 16 to 19 (37 per cent).

All interviewees were under 17 at the time of the alleged offence but 26 were aged 17 and over by the time of trial. These witnesses were included in the project because of anomalies concerning their eligibility for special measures and the question posed by the consultation paper *Improving the Criminal Trial Process for Young Witnesses* as to whether the age of eligibility should be raised to under 18 (Question 23, Office for Criminal Justice Reform, 2007b). The UN Convention on the Rights of the Child, which came into force in the UK in 1992, applies to young people aged 17 and under.

Ethnicity

Parents and carers were asked to complete an equal opportunities monitoring form for their child:

[166] Information on ages of young witnesses is not currently available from government sources. The age bands 'under 10', '10-13' and '14-17' were introduced to the CPS COMPASS and Witness Care Units WMS systems in April 2008: paras 5.9, 5.11 *Safeguarding Children* (HM CPS Inspectorate, 2008).

Table 14 Ethnicity of participating young witnesses

Ethnicity	Number	Percentage
White British	151	83
White Irish	12	7
Any other White background	2	1
White and Black Caribbean	5	3
White and Black African	2	1
White and Asian	2	1
Any other mixed background	1	1
Black Caribbean	2	1
No information provided	5	3

Types of witness and offence

All 182 witnesses were called by the prosecution. Referral forms indicated that:

- 122 were victims of an offence charged (67 per cent).
- 115 knew the defendant (63 per cent). For 39, the defendant was a member of the immediate or extended family; for 25 it was a fellow school pupil; for 12 it was someone in a position of trust (teacher, scout leader or school bus driver); and for the remaining 39, how the witness knew the defendant was not specified.

Charges were classified by the most serious offence:

- 94 witnesses were called to give evidence in relation to violent offences (52 per cent).
- 63 in relation to sexual offences (35 per cent).
- 25 in relation to other offences (14 per cent).

Some interviews were conducted with more than one young witness in the same case:

- 125 interviews concerned one child in the case.
- 43 related to two children in the same case.
- 14 concerned between three and five children in the same case.

In all, 172[167] of 182 interviewees gave evidence (four of whom did so at a Newton hearing):

[167] In England and Wales, 157 gave evidence: 33 per cent in magistrates' court, 23 per cent in youth court, 36 per cent in Crown Court and 8 per cent gave evidence twice, on appeal to Crown Court from youth or magistrates' court.

