

Measuring up?

Evaluating implementation of Government commitments
to young witnesses in criminal proceedings

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Executive summary

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Cruelty to children must stop. **FULL STOP.**

Introduction

By The Rt Hon Lord Justice Thomas
Vice-President of the Queen's Bench Division
and Deputy Head of Criminal Justice

July 2009

In 2004, Lord Judge warmly welcomed *In their own words*, a study by Joyce Plotnikoff and Richard Woolfson 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 relived 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 that 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 that need 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 study

This study was coordinated by Barbara Esam, lawyer, NSPCC, and was 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 wellbeing". 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.

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 considers whether the "implementation gap" has narrowed since 2004. It is based on the first national survey of young witnesses and their parents or carers across England, Wales¹ and Northern Ireland. The full report, this executive summary, and *Good practice guidance in managing young witness cases and questioning children* (messages emerging from the research) can be downloaded from www.nspcc.org.uk/measuringup. A disk of recordings made by young witnesses in the study *Giving young witnesses a voice: Experiences of young witnesses in criminal trials* (feedback for the judiciary, criminal justice system personnel and witness supporters, and advice for young witnesses waiting to go to court) can be requested for training purposes from www.nspcc.org.uk/publications or 020 7825 7422.

Since 2004, a wide range of government commitments has been issued or updated, providing a sound framework for supporting young witnesses and enabling them to give their best evidence. The results of the study, which examined levels of delivery, clearly illustrate the benefits experienced by young witnesses when these policies are put into practice. For example, the introduction of Witness Care Units (WCUs) has made an important contribution to conveying information to families of young witnesses in England and Wales: parents of 75 per cent of these children acknowledged receipt of information before trial from a WCU, more than from any other source.

Overall, however, the findings reveal that there is still 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 (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).

1. In 2006/2007, the Witness Service supported over 30,000 young witnesses in England and Wales: email to the authors from Witness Service Development, Victim Support National Centre, 6 October 2008.

Most referrals to the research project in England and Wales came from WCUs but some were also received from 10 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). Few young witnesses give evidence for the defence. Despite efforts to do so, the researchers were unable to identify for interview any young defence witnesses.

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 but, in some instances, a fresh approach is needed to clarify responsibility for delivery of specific services and to improve accountability through monitoring. The following sections summarise policies and guidance, and compare them with children’s experiences. Recommendations for action follow at the end and are 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.

Methodology

The 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
- the criminal justice system’s treatment of young witnesses
- 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, 2003²): “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.

The findings are based on interviews with 182 young witnesses aged five to 19 (67 per cent of whom were victims of crime), parents of 172 of these young people, as well as information received from the managers of 52 Witness Services, seven young witness support schemes, and from each organisation that referred a young witness to the research project.

2. *Every Child Matters* applies to England. Wales and Northern Ireland have their own policies.

Offering support tailored to young witnesses' needs

Current policies indicate that all young witnesses are entitled to support, tailored to their individual needs. The objectives include offering support from an early stage (CJS³, 2007, sections 5.1–5.28) and enabling children to give their best evidence with as little stress and anxiety as possible (CPS⁴, 2006, p5). On the day of trial, a trained child witness supporter will be there to help (CPS, 2006, p14).

The role of a supporter who accompanies 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 (CJS, 2007, Appendix G.1–2). Policies commend a flexible approach to the choice of supporter, according to the needs of the witness (CJS, 2007, section 5.23; CPS, 2006, p14).

The proportion of young people receiving direct help before trial was disappointing:

- Fifty per cent made a familiarisation visit to the court before the trial.
- Forty-five per cent met a supporter before the trial for the purpose of preparing them for court.
- Forty-four per cent had neither a familiarisation visit nor pre-trial contact with a supporter.

Young witnesses' experiences of support differed across court regions: 41 per cent of young witnesses in the Southeast and London had a pre-trial visit to the court, compared with 60 per cent of those in the Northwest and Wales regions, and 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:

- Ninety-five per cent of those who met a supporter before trial said this made them feel better about going to court.
- Eighty-four per cent who visited the court before trial said this helped them feel more confident or to know what to expect at trial.
- Over one-third of children and parents said that contact with a supporter before trial was what made it possible for the child to go to court.

National Standards for supporting young witnesses (CJS, 2007, Appendices F, G) are predicated on the assumption of continuity of support before court and at trial:

- Children and parents described continuity of support as reassuring, 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.

Research studies have demonstrated that stress reduction can flow from the presence of a known and trusted supporter when a young person gives evidence, improving recall and enhancing the quality of children's testimony (Myers, 1997; Carter et al, 1996; Murray, 1995; and Batterman-Faunce and Goodman, 1993). However, witness supporters indicated that decisions about who accompanied young witnesses 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.

3. Criminal Justice System.

4. Crown Prosecution Service.

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, and 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 (CPS, 2006, p14), but while the child’s memory should be refreshed before the day of trial, the study suggests that adding this task to the pre-trial court visit could result in information overload for many children.

The Young Witness Pack materials⁵ were designed to be used with the assistance of a supporter. The study found that:

- Seventy per cent of children received such booklets. Of these, 31 per cent were assisted in going 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).
- Thirteen per cent received the young witness DVD *Giving Evidence: what’s it really like?* (NSPCC, 2004).

Access to court familiarisation visits and witness support

Feedback from parents interviewed for the study indicated that 76 per cent of their 172 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 to be reminded about court unnecessarily, or because the timing of the proposed court visit was not convenient or the court was too far away or inconvenient 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 form⁶ asks officers to record whether a witness is willing and likely to attend court, has any specific care needs or requires special measures as a vulnerable or intimidated witness. The form also records whether the witness has opted in or out of referral to Victim Support or the Witness Service. If special measures may be required, the form directs the officer to submit the MG2 initial witness assessment, which assesses the witness’s need and eligibility for such measures. However, some WCUs advised that police officers seldom completed the MG11 if the witness made a visually recorded interview; that completion of MG2s for eligible children was inconsistent; or that witness care officers did not routinely have access to MG2 forms.

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 trial. However, even if parents did not consent to personal details being passed on, witness supporters needed advance notice of young witnesses’ attendance, to ensure, at a minimum, that 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.

5. 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.

6. The Police Service of Northern Ireland has introduced forms equivalent to the MG11 and MG2.

For some, contact with a supporter several months before the trial had been an important reassurance and others would have welcomed earlier contact.

Assessing young witness needs

A high proportion of children in the sample, 79 per cent, admitted they had been worried or anxious in the pre-trial period. More than half (52 per cent) described experiencing symptoms of stress while waiting to go to court, and over a third (38 per cent of those in full-time education) said their studies or attendance had been affected, while a few dropped out or had to change schools. 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 said some aspect of their child's needs and wishes had been discussed with 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.

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: examining the impact on witnesses and the criminal justice system (Plotnikoff and Woolfson, 2007) 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.

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 who work with children.⁷ These induction standards relate to essential principles and values, effective communication, child development and safeguarding children. "National Standards"⁸ for supporters and the NSPCC handbook *Preparing young witnesses for court* (Plotnikoff and Woolfson, 1998) have not been updated to take account of *Every Child Matters* and CWDC standards.

7. See www.cwdcouncil.org.uk/induction-standards.

8. The "National Standards" are annexed to *Achieving Best Evidence* (CJS, 2007), but were not updated when that publication was revised in 2007.

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 the child's best interests being the paramount consideration in advice about pre-trial therapy (*Provision of Therapy for Child Witnesses*, 2001, CPS et al, paras 4.3–4). It was not always possible to determine what work with young witnesses was undertaken by court-based Witness Services, as some did not retain records post-trial.⁹

Ensuring appropriate questioning at court

Current policies indicate that questions at court should match children's age and abilities, and they should be allowed enough time to answer questions that are put to them in a systematic and logical sequence (CPS, 2006, pp 16–17). Questioners should try to avoid misunderstandings; prosecutors should draw inappropriate questioning to the court's attention; and the judiciary should be alert to witnesses who experience difficulties in understanding which, if not corrected, might detract from the quality of their evidence (CJS, 2007, sections 6.11–6.17; Judicial Studies Board, section 4.1.3). An intermediary assessment should be considered if a child seems unlikely to be able to recognise a problematic question or tell the questioner that he or she has not understood (CJS, 2007, Box 2.1).

Bearing in mind that some young witnesses may not recognise problems in answering questions during trial, many of the 172 young people who gave evidence identified difficulties:

- Forty-nine per cent did not understand some questions at court. This applied across all age ranges in the sample and is consistent with previous studies.
- Sixty-five 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 about a problem, but fewer than half actually did so.
- A fifth of young witnesses were unable to tell the court everything they wanted to say.

Young people reported cross-examination techniques likely to elicit inaccurate responses from children:

- Fifty-eight 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 recalled being challenged about their account of events without being accused of lying, 57 per cent said they had been accused of doing so, usually more than once. "Telling the truth but not being believed" is regarded by children as one of life's most stressful occurrences (Yamamoto et al, 1987) 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 (Schuman et al, 1999).
- Eleven per cent of victims of sexual offences volunteered that they were asked to demonstrate intimate touching on their body, even though CPS guidance indicates this is "almost always inappropriate and unnecessary" (CPS, 2008, 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.

⁹ Victim Support National Centre advises that this will be mandatory by 2009.

The Berrow 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 research here and in other jurisdictions detailing the problems that children encounter when questioned at court (eg Ellison, 2002 (international overview); Plotnikoff and Woolfson, 2007, 2004 (England and Wales); Saywitz, 2002 (USA); Henderson, 2002 (New Zealand); and Murray, 1995 (Scotland)). 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 Criminal Evidence Act, 1999). Intermediaries are registered 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, 70 per cent of children in areas where the special measure had been implemented may have benefited from assessment by an intermediary.¹⁰ 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 been formally adopted.

The findings of this study indicate a gap between the intent of this special measure legislation and the ability or receptiveness 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.

Avoiding delay in young witness cases

Current policies indicate that courts should give priority to the listing of young witness cases (CJS, 2008a, Appendix A, 2[b]) and avoid adjournments (Judicial Studies Board, 2005, sections 4.1.3, 4.4.2) with the aims of reducing stress and ensuring that events are fresh in the child’s memory (CPS, 2008, para 84); minimising waiting time before children give evidence; and starting their evidence in the morning while they are fresh (CJS, 2007, section 5.81).

Delays in court proceedings are linked to adverse effects on children’s mental health, welfare and the quality of their evidence (for example, Sas et al, 1991). Giving priority to cases involving young witnesses has been a frequently restated government commitment since 1988 but its effectiveness is not monitored. The study found that:

- 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.
- Fifty-one 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, and 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.

10. 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.

- Waiting times for victim witnesses were no shorter than for non-victim witnesses, despite the *Code of Practice for Victims of Crime* (Criminal Justice System, 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.

Considering special measures, taking account of young witnesses' views

The menu of special measures must be explained to young witnesses, so that their views can be recorded, and account taken of views that change over time (CJS, 2007, sections 5.10, 5.32, 6.4). 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 (Youth Justice and Criminal Evidence Act, 1999, section 21).

This reveals a fundamental conflict between policies that seek young witnesses' preferences, and legislation that gives certain young people no choice, 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 use of live link. WCUs and police officers reported being 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 the study, 88 per cent of young witnesses who gave evidence were the subject of applications for special measures: 75 per cent used the live link, while 13 per cent gave evidence in court, screened from the defendant, and 12 per cent gave evidence in open court without a screen.

Many young people said they had no choice about how they gave evidence but 82 per cent were content with the arrangements made, and 39 per cent would have been unwilling to give evidence any other way. However, 15 per cent did not give evidence the way they wanted. Most who used the live link appreciated this opportunity but 9 per cent found the link 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:

- Thirteen per cent had practised on a live link at a familiarisation visit
- Forty 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
- Twelve per cent saw the defendant on the live link screen.

Of those who gave evidence in the courtroom, 40 per cent were unhappy about it. Some gave evidence in court because of live link failure; others did so in open court because screens were not available, even though an application to use a screen had been granted.

Of those young people who gave evidence using the live link, 40 per cent described difficulties and delays relating to equipment. Problems included poor sound and visual quality on the live link; equipment failure; difficulty in playing visually recorded statements; and the lack of screens.¹¹

Not counting those giving evidence in the youth court, which is closed to the public, 41 per cent of young witnesses appear to have been eligible for the special measure permitting the public to be excluded from the court during the child's testimony. The measure was actually used for one of these witnesses.

All child witnesses can make a statement in the form of a visually recorded interview: 55 per cent of children in the study had done so, compared to 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 under 17 is a missed opportunity, because such a recording extends their eligibility to use the live link even if they have reached their 17th birthday by the time of trial.¹² On the whole, the 17 year-olds interviewed for the study were similar to the rest of the sample 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, compared with other court regions: 43 per cent made a visually recorded statement, compared with 68 per cent in the Northwest, and 60 per cent of those who gave evidence did so over the TV link, compared with 91 per cent in the Northwest.

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, but should also be allowed the opportunity to wait on standby away from court (Judicial Studies Board, 2005, section 4.4.2; CJS, 2008b, Standards 21, 23¹³).

Safety before the trial and at court was a concern for a significant minority of young witnesses. One-fifth described themselves as intimidated in the pre-trial period, and 15 per cent had been afraid to go out. Parents described 28 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.

11. HM Courts Service has instituted a rolling programme to replace and upgrade technical equipment.

12. This applies even if the recording is not played as their evidence-in-chief.

13. This consolidates existing witness commitments and processes into one document.

While 52 per cent of children 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, 45 per cent saw the defendant in the court building or while entering or leaving, often causing anxiety and distress to the witness. Only 5 per cent recalled being offered the opportunity to wait on standby away from the court. Parents reported that security at court was handled “very well” for 33 per cent of their children, “quite well” for 19 per cent, and “not well” for 35 per cent.

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 (2006, para 4.21) 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”. More than 50 per cent of courts can now link to another court or a non-court site.¹⁴ But in this study only 7 per cent who gave evidence by live link did so from a remote site. Using a live link at a different court overcomes problems of witness intimidation or confrontation with the defendant, though 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 had met the prosecutor before the trial started, significantly higher than the 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 using a remote link, because of rapport-building and reinforcing advice. However, this requires advance knowledge of the trial judge’s identity and that judge’s practice concerning meeting young witnesses.

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, 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”.¹⁵ 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, for instance *Safeguarding Children* (CPS, 2008), but there is, as yet, little evidence of the “overarching” approach the inspectors called for in respect of the courts.

14. 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.

15. Introduction, *Staying Safe: a consultation document*, 2007.

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.

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 (Commission for Social Care Inspection et al, 2005, para 6.2). 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” (HM Inspectorate of Court Administration, 2006, para 4.19).

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 (for example, HM Crown Prosecution Service Inspectorate, 2008, para 1.9; Home Office, 2008, para 3.5).

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 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 official recognition of their contribution through an award.

Recommendations

I Offering support tailored to young witnesses’ needs

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.
3. Include in statutory special measures the opportunity to have an independent supporter, known to the child, to accompany young witnesses giving evidence.
4. Update National Standards¹⁶ and guidance for young witness supporters, taking account of Children’s Workforce Development Council induction standards and other recent policies.

16. Appendices F and G in *Achieving Best Evidence in Criminal Proceedings*, (CJS, 2007).

5. Revisit delivery methods for young witness pack materials¹⁷, 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 police and witness care 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.
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, p.14).
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, p.14).

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 in going through young witness pack materials.¹⁸

17. 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.

18. 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.

14. Pass on witness needs and concerns 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.

Department for Children, Schools and Families

19. Encourage Local Safeguarding Children Boards to address young witness support arrangements, because of their strategic role in monitoring local agencies' activities to safeguard children.

II Ensuring appropriate questioning at court

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 outline¹⁹ or alternative method for eliciting this information.

III Avoiding delays in young witness cases

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.

19. See example at Annex B, *Good practice guidance in managing young witness cases and questioning children* (2009), www.nspcc.org.uk/measuringup

IV Considering special measures,
taking account of young witnesses' views

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.

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.

V Helping young witnesses feel safe

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.
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VI Safeguarding young witnesses as a collective responsibility

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.²⁰

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 (2006) in *Valuing Victims and Witnesses*, 2006, para 4.19.
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VII Listening to young witnesses about their experiences

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.

²⁰ See, for example, Humberside Young Witness Service’s multi-agency protocol, listed in Appendix 1 of *Young Witness Support: It’s in your hands* (Office for Criminal Justice Reform, 2009) in the CD accompanying the guidance.

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