

JOINT INSPECTION REPORT ON THE EXPERIENCE OF YOUNG VICTIMS AND WITNESSES IN THE CRIMINAL JUSTICE SYSTEM

FEBRUARY 2012

HMCPSI
HMIC

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ABBREVIATIONS

Common abbreviations used in this report are set out below, with any local abbreviations explained in the report. A glossary explaining common terms can be found in Annex F.

ABE	Achieving best evidence	MOJ	Ministry of Justice
ACPO	Association of Chief Police Officers	NWNJ	No Witness No Justice
CJRD	Criminal Justice Reform Directorate	OCJR	Office for Criminal Justice Reform
CJS	Criminal justice system	OIC	Officer in the case (police)
CMS	Case management system (also known as Compass)	PCD	Pre-charge decision
CPS	Crown Prosecution Service	PCMH	Plea and case management hearing
DCV	Direct Communication with Victims	PSA	Public Service Agreement
EC	Early consultation	VPS	Victim Personal Statement
EIA	Early investigative advice	VWCDU	Victim and Witness Care Delivery Unit
HMCPSP	Her Majesty's Crown Prosecution Service Inspectorate	WAVES	Witness and Victim Experience Survey
HMCTS	Her Majesty's Courts and Tribunals Service	WCO	Witness care officer
HMIC	Her Majesty's Inspectorate of Constabulary	WCU	Witness care unit
HMICA	Her Majesty's Inspectorate of Court Administration	WMIS	Witness management information system
IT	Information technology	WMS	Witness management system
LCJB	Local Criminal Justice Board	WS	Witness Service
LSCB	Local Safeguarding Children Board	YWS	Young Witness Service
LWAC	List of witnesses to attend court		
MG2	Special measures request form completed by police officers		
MG3	Charging form completed by police and charging prosecutor		
MG6	Confidential information on a case file - form completed by police		
MG11	Form used to record a witness's statement and personal details		

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CHIEF INSPECTORS' FOREWORD

In 2009 Her Majesty's Chief Inspectors of the Crown Prosecution Service, Constabulary and Court Administration published a report into the experiences of victims and witnesses in the criminal justice system (CJS). While that report identified and highlighted good practice, it also set out 19 recommendations and identified 25 further aspects for improvement, designed at improving the service that victims and witnesses receive.

It is important that we, as public service inspectorates, conduct follow-up inspections to establish how our recommendations have been addressed and what progress has been made. It is equally important that in doing so we should not merely replicate previous inspections, but also focus our limited resources on the most pressing issues within the CJS. For that reason this inspection has not only re-visited the recommendations arising from our 2009 report but, also focused particularly on the experience of young victims and witnesses, who are amongst the most vulnerable of those who come into contact with the CJS.

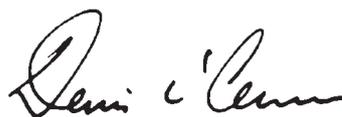
We are concerned to find that there has been only limited progress in addressing the majority of recommendations made in the earlier report. Further, we have found that the experience of young victims and witnesses is affected by the shortcomings in the system overall but, for children and young people, the effects can be even more devastating. Their experience is sometimes good, sometimes reasonable but too often poor, with some of the poorest experiences occurring in the most serious cases. Care in supporting young victims and witnesses can be found in the system, but unfortunately not regularly and not all in the same place at the same time. Young people are being left to flounder in an imperfect system. The good practice examples and recommendations in this report aim to capture the best of the system and encourage it to be delivered consistently. But our overriding message is that the way the interests of young people are considered must improve and that their interests must be taken seriously. Any new arrangements must focus properly on the needs of children and young people. This will challenge the CJS, but it must be addressed by all agencies.

We are grateful for the assistance of the criminal justice agencies involved in the fieldwork for this inspection, particularly the liaison officers who helped us to make the complex arrangements to visit multiple agencies in five areas. We are also grateful to the NSPCC and Joyce Plotnikoff for providing advice and guidance on their work on this subject.

Although HM Inspectorate of Court Administration has been closed in advance of its formal abolition, this inspection included evaluation of HM Courts and Tribunals Service practice in order to present a complete picture.



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INTRODUCTION

This is the report of the Chief Inspectors of Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) and Her Majesty's Inspectorate of Constabulary (HMIC) into the treatment of young victims and witnesses in the criminal justice system (CJS). It has been undertaken as part of the criminal justice Chief Inspectors' joint inspection programme for 2010-11.

Background

In May 2009, HMCPPI, HMIC and Her Majesty's Inspectorate of Court Administration (HMICA) published a *Report of a joint thematic review of victim and witness experiences in the criminal justice system*. In view of the then Government's pledge in 2007 to put victims at the heart of the CJS and the significant investment in supporting victims and witnesses of crime, the aim of the review was to evaluate the effectiveness of services provided to victims and witnesses.

The review found that the general level of service provided to prosecution witnesses had improved significantly and the setting up of over 150 witness care units (WCUs) had been central to this. However, the review also found a lack of consistency in the service provided and considerable scope for improvement if all victims and witnesses were to receive the level of service that they are entitled to.

In autumn 2009, criminal justice Chief Inspectors consulted on their plans for future joint inspection. A proposal to follow-up and build upon the earlier review with further work focusing on the treatment of young victims and witnesses was endorsed by stakeholders and became part of the joint inspection business plan for 2010-12.

Aim and objectives

Criminal justice agencies currently face unprecedented financial challenges as they seek to reduce their budgets in the years ahead. This will involve some rethinking of services delivered. The most recent joint inspection consultation with stakeholders highlighted again the importance of protecting the most vulnerable young victims and witnesses as agencies take steps to reduce their budgets. Aside from their vulnerability, children and young witnesses of today are the adults of tomorrow. Ensuring they have the confidence to report a crime and are then supported to appear as witnesses enabling them to give their best evidence, is clearly central to a healthy and well functioning criminal justice system.

The overall aim of this joint review was to identify valuable and effective services provided to support young victims and witnesses which will, during this period of financial austerity, assist agencies in making some of the difficult decisions ahead.

In order to do this, the review evaluated the extent to which:

- young victims and witnesses are kept properly informed about the progress of their case;
- the continued involvement and commitment of young witnesses is ensured through early consideration of their needs, and effective response to these to maximise the likelihood of attendance at court and assist them give their best evidence; and
- arrangements at court enable young victims and witnesses to participate fully.

We also assessed progress against recommendations made in the earlier joint review and the extent to which criminal justice agencies demonstrate leadership and work in partnership to deliver effective services for young victims and witnesses. The review also sought to identify and promote good practice.

During this review systems that support the carrying out of business in the magistrates' courts and the Crown Court have been examined. Those systems and the way they operate in practice greatly influence the experiences of victims and those citizens who are required to attend to give evidence. We have been alert in this report to the need to reflect those experiences fully and accurately whilst upholding the independence of the judiciary. In accordance with the principles underpinning the Constitutional Reform Act 2005, this review does not report on judicial decision making or the exercise of judicial discretion.

Methodology

Our findings are drawn from fieldwork in five CJS areas where we met with representatives of the judiciary and managers and staff responsible for dealing with victims and witnesses from each of the criminal justice agencies as well as Victim Support (VS) and the Witness Service (WS) and Young Witness Service (YWS). We also interviewed lead representatives at a national level in each of the criminal justice agencies.

Most importantly we spoke to a number of young victims and witnesses after they had given their evidence. We also conducted a file examination of recently completed cases which had gone to trial. Where possible the review included both prosecution and defence witnesses, although in practice obtaining views and data on the latter proved difficult.

Inspectors observed trials at court and although we saw some witnesses giving evidence we do not in this report make any assessment regarding the quality of advocacy seen as this was outside our scope. However, other inspections have taken, or will, take place to consider advocacy.

A more detailed account of the methodology we used to gather our evidence and data is set out in the annexes, as are the results of our interviews with young witnesses and our file examination.

Structure of the report

Section 1 of the report sets out our findings in respect of the experience of young victims and witnesses.

In chapter one, we set out some of the key facts and figures about young victims and witnesses. The main findings of the review follow in chapters two to seven, in which we have identified the factors that promote the best experience for young victims and witnesses.

Section 2 of the report sets out and evaluates actions taken in respect of the recommendations made to the criminal justice agencies in the earlier report. The extent to which recommendations have been achieved is rated as follows:

- Achieved - The CJS has accomplished what was required.
- Substantial progress - The CJS has made real headway in taking forward its planned actions in relation to the recommendation or aspect for improvement.
- Limited progress - The CJS has made some limited progress in addressing the recommendation or aspect for improvement.
- Not progressed - The CJS has not demonstrated progress against the recommendation or aspect for improvement.

- No longer applicable - The recommendation or aspect for improvement is no longer applicable.
- Insufficient information available to make a judgement - The methodology for this inspection did not allow for the collection of evidence against this recommendation or there have been recent developments which make it difficult to make a judgement.

During the review, area staff were asked to identify good practice and helpful approaches to improving the treatment of young victims and witnesses. Examples are highlighted in the text and others are summarised in Annex E.

Acknowledgements

The review team are grateful for the time and input of those who contributed to this review in interviews and focus groups. Particular thanks go to the liaison officers in each of the criminal justice agencies who were responsible for co-ordinating the fieldwork arrangements so efficiently.

EXECUTIVE SUMMARY - OVERVIEW AND KEY FINDINGS

Background

This is the report of the Chief Inspectors of Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) and Her Majesty's Inspectorate of Constabulary (HMIC) into the treatment of young victims and witnesses in the criminal justice system (CJS). It has been undertaken as part of the criminal justice Chief Inspectors' joint inspection programme for 2010-11.

In May 2009, HMCPPI, HMIC and Her Majesty's Inspectorate of Court Administration (HMICA) published a *Report of a joint thematic review of victim and witness experiences in the criminal justice system* which evaluated the effectiveness of services provided to victims and witnesses. The review was carried out in view of the then Government's pledge in 2007 to put victims at the heart of the CJS, and the significant investment in supporting victims and witnesses of crime. However, the landscape has now changed: the criminal justice agencies face unprecedented financial challenges.

The aim of the current review, which was carried out between January and April 2011, was to examine the experience of young victims and witnesses, at this time of change. The review aimed to identify the most valuable services that need to be provided and retained to support some of the most vulnerable in our criminal justice system, that is, young people, as agencies take steps to reduce their expenditure. It also sought, where possible, to assess progress against the recommendations made in the 2009 joint review.

In a 12 month period around 33,000 children and young adults under the age of 18 years will be involved in giving evidence in a criminal trial, with further young people victims of or witnesses to crimes that do not end up with a criminal prosecution. Aside from their vulnerability, children and young witnesses of today are the adults of tomorrow. Ensuring they have the confidence to report a crime and are then supported to appear as witnesses enabling them to give their best evidence, is clearly central to a healthy and well functioning criminal justice system.

Key findings of this review

Progress against recommendations made in the original review has been limited. Initial needs analyses are still not undertaken regularly by the police and needs are not identified as regularly as they should be by the Crown Prosecution Service (CPS) at the charging stage. Information from the criminal justice agencies to witness care units (WCUs) continues not to be passed to them in good time, and limited progress has been made in ensuring appropriate Victim Personal Statements are made. Performance monitoring of the service provided to victims and witnesses is limited. However, oral applications can now be made for special measures or for an extension of time in which to make them, and there has been an improvement in the approach to assessing risk and in the general security of court buildings.

This review has shown, however, that the shortcomings that continue to exist in the way the CJS responds to victims and witnesses, apply equally to the young, and have the potential to have far reaching and distressing consequences.

Young victims and witnesses are amongst some of the most vulnerable users of the CJS. If victim and witness care is to be targeted at those with the greatest need this will almost always include young people. This review examines how well the types of support that are required most by young witnesses work at present. We set out the key factors that should be improved upon or retained to best benefit and support young witnesses in the future:

1 Early identification of needs: the needs of young victims and witnesses and the appropriate special measures they need to enable them to give their best evidence are not always identified.

Recording witness needs and considering which special measures would assist them to give their best evidence possible still needs to improve; police officers need to identify this and indicate it appropriately on the file submitted to the CPS as early as possible. Knowledge and understanding of police officers about the various special measures available, and what they mean in practice, was mixed.

2 Special measures and what they mean: special measures should be sought after full consultation with young witnesses and their parents or carers and exactly what the measures mean for the young person should be explained.

This does not always happen. Presumptions are often made on behalf of young witnesses about the best method for them to give their statement. Young witnesses can now 'opt out' of special measures but they need to be made aware of this. Officers clearly recognised the need to consider video recorded interviews in certain circumstances, such as when a child was very young or where numerous serious sexual offences were alleged to have been committed. However, where the offence was less serious and/or involved older children, there was a greater likelihood of a written statement being taken. This decision is a critical one, and it was clear that front line police officers did not fully consider the implications of their decision about the way the statement was taken on the presentation of evidence during the trial, which in many cases may be many months, or in some cases a year, away.

3 The timeliness of applications for special measures has improved.

This is largely due to the change in the Criminal Procedure Rules and the courts accepting oral applications at first hearings in both magistrates' and Crown Court. Communicating the outcome of the applications to the WCU for onward transmission to the young witness needs to improve. Some court and Witness Service staff were not always aware of what special measures were granted and therefore required, which made allocating the correct trial courtroom and planning to offer the best support difficult.

4 Video recorded evidence (the achieving best evidence (ABE) interview): video recorded evidence is not used as often as would be appropriate, is of variable quality and rarely quality assured.

Police officers have difficulty in obtaining the services of a trained video interviewer and sometimes there are unacceptable delays. Therefore, unless the offence is a serious one or the child was extremely young, officers tend to press on and take a written statement regardless of the possible impact on the quality of evidence for trial and the effect on young witnesses of giving live evidence. Interviews were regarded by judiciary and prosecutors as over long, often containing confusing and repetitive details which rather than clarify, create ambiguities. The quality of interviews was monitored by only one force visited. This is subject of a recommendation. New guidance was issued to all forces in March 2011.

- 5 Early investigative advice by the CPS to the police: early consultations or early investigative advice is often not sought from the CPS by the police in appropriate cases and hardly ever before the ABE video interview is conducted.**

The failure to seek early consultation is a lost opportunity to obtain advice over complex issues which would assist in planning the interview and determining a case strategy to build the best case possible. Obtaining such advice may also alleviate some of the regular complaints about the quality of ABE video interviews.

- 6 The quality of initial needs assessments: the poor quality of initial needs assessments has a detrimental effect in cases which progress to trial.**

WCUs are hampered at the outset by the receipt of poor information. They should be able to remedy a lack of information about witness needs by carrying out a detailed needs assessment. These are not always being done. In some areas they are sent out by post for witnesses or their parents/ carers to complete. But needs assessments are far more likely to be accurately completed following a conversation with the witness or their carers and should only be sent out for completion by the witness who may not have the skills to complete a written assessment themselves, if all reasonable attempts to speak to them have been unsuccessful. WCUs are in a state of flux and a large number are being merged. More detailed needs assessments should only be carried out on those witnesses who are warned to attend at trial which would focus resources on those in most need, in the light of the need to reduce expenditure overall.

- 7 Using intermediaries better: there was a low level of awareness about the benefits of intermediaries and very little use of them to assist the witness during ABE interviews.**

Intermediaries¹ were appointed more often when a case was going for a trial, and feedback on the value of their input was variable. We have made a recommendation supporting their early involvement with young witnesses.

- 8 Young Witness Packs and facilitated discussions: enabling young witnesses to understand and prepare for going to court is vital. The Young Witness Information Packs were seen as invaluable. The pack's value was enhanced by the facilitated reading and discussions offered at the young witness's home by the Young Witness Service.**

The decision by the Ministry of Justice to continue the central production of Young Witness Packs was widely welcomed although the Going to court information DVD was not seen as engaging by teenaged witnesses, perhaps because it was developed for a different audience, with many choosing not to view it. It would be more beneficial to convey the important information it contains using social media forums that are more widely used by young people. We have made a recommendation concerning this. Young witnesses were generally satisfied with the practical information provided, but appreciated the enhanced service provided by Young Witness Services where these operated.

¹ In this report the term intermediary means a Registered Intermediary - a professional communications specialist who has been recruited, selected and accredited by the Ministry of Justice, and whose details are recorded on the *Intermediary Register*, the Witness Intermediary Scheme's national database.

9 Access to therapy and counselling: there are mixed and conflicting attitudes to the access of young victims to therapy and counselling.

Young victims are often traumatised by their experiences and need early access to therapy, including counselling. However some investigators reported that prosecutors had instructed them not to provide details of the offence to counsellors, but the counsellors were unable to help the child without discussing aspects of the case. Prosecutors themselves voiced concerns over the possible impact of pre-trial therapy on the case. Official guidance confirms that access to therapy cannot be prevented by the prosecution. We have made a recommendation concerning this point, and we identify an example of good practice.

10 Viewing recorded evidence at the right time: young witnesses are not routinely given the opportunity to view their recorded evidence before the day of the trial and close to the trial date.

Many weeks or months will usually have passed between the date evidence was recorded and the trial. Not all young witnesses were able to view their evidence before the day. Responsibility for arranging this varied in different areas. In some areas a DVD of the interview was shown to the young witness at home by the police, in others at court by the Witness Service as part of a pre-trial visit. However, many young witnesses either viewed the DVD at court on the trial date before the trial commenced, or only saw the recording as it was being played to the court as evidence in chief. This is poor practice. This is the subject of a recommendation.

11 Visiting the court before the trial date: not all young victims and witnesses are able to visit the court before the trial date.

It is vital that every effort should be made to enable all young witnesses to visit the court before the trial date to enable them to ask questions, visualise where they will be and meet those who will be supporting them on the day. Where pre-trial visits take place they are viewed very positively by young witnesses and their families. In some courthouses young witnesses had the opportunity to practice using the TV link equipment, which is good practice. But not all young witnesses are offered this opportunity. Some cannot take advantage of an offered visit because of the court's opening hours. Where a visit had not taken place before the date of trial, Witness Service staff offered the equivalent on the trial date. This is welcome but does not give young witnesses the essential re-assurance required before coming to court. This essential support service is still not taken advantage of by every young witness for a variety of reasons and further thought needs to be given to how young witnesses can be further encouraged to accept this opportunity. This was the subject of an aspect for improvement in the previous joint inspection.

12 Waiting times for trial dates and on the day: the waiting time for trials involving young victims and witnesses and waiting times on the day needs to be reduced.

Delays in obtaining trial dates are not beneficial to young witnesses. There are some lengthy waits for trial dates, particularly in the Crown Court. Decisions on trial dates are made by the judiciary and we do not comment on their actions. However, in order to minimise delay prosecution and defence need to ensure that accurate and timely information is passed to the court and that cases are well prepared and ready for trial on the first trial date. This we found was not always the case. The result is that young witnesses can face some long delays before the case is heard. There are also delays in the case being heard on the day. We found an average waiting time in this review of three hours 14 minutes. Two recommendations relate to these matters.

- 13 The Young Witness Service (YWS): the work of the Young Witness Service is extremely valuable. It meets essential needs that otherwise would not be met, in a way that is sensitive to the particular needs of young people.**

The YWS is only available in a small number of areas, with most care of young witnesses being covered by generic services. The YWS offers an enhanced level of contact with the young witness before the trial, usually at the witness's home, and witness supporters have additional training or professional qualifications in working with young people. The combination of these benefits enables a relationship of trust and understanding to be established between the witness and supporter before the trial. Criminal justice agency staff and members of the judiciary were very supportive of the benefits of the YWS, which have been verified in academic study. Difficult choices are required about which services to fund due to current restrictions on public spending. Many interviewees from the statutory agencies made the point that if the Witness Service in general, and the Young Witness Service, were not able to function they would not have the resources to fill the gaps created and young victims' and witnesses' needs would not be met. If so that would leave questions about whether children were being adequately safeguarded.

Recommendations

We make the following recommendations:

-
- 1 Police forces should put into place a system that provides feedback to continuously improve the quality of achieving best evidence video interviews (paragraph 2.4).

 - 2 Police forces should raise awareness of the benefits of intermediaries and ensure this is considered at the pre-interview stage (paragraph 2.5).

 - 3 The CPS should ensure that all prosecutors are familiar with the guidance regarding the *Provision of therapy for child witnesses prior to a criminal trial* (paragraph 2.6).

 - 4 Crown Prosecution Service, police, witness care unit, HM Courts and Tribunals Service and Witness Service should have a clear local agreement setting out processes for witnesses to refresh their memories by watching their video recorded achieving best evidence interview before the day of trial (paragraph 2.7).

 - 5 Sufficient time should be given to advocates to enable the achieving best evidence recorded interviews to be watched in preparation for trial (paragraph 2.8).

 - 6 HM Courts and Tribunals Service should ensure that facilities to show electronic evidence consistently enable trials to proceed effectively (paragraph 2.8).

 - 7 Police forces should ensure that all relevant witness details are provided to witness care units (paragraph 4.2).

- 8 The Ministry of Justice should consider changing targets for providing updates on the outcome of court hearings to victims and witnesses to ensure they are provided with accurate information on the day of the hearing (paragraph 4.3).

- 9 The Ministry of Justice should ensure that age appropriate communication and media options are used for conveying information to young people about giving evidence at court (paragraph 4.4).

- 10 Criminal justice agencies should adopt a joint approach to case progression and performance management based on evidence of what works, and should resource the agreed approach adequately (paragraph 5.2).

Good practice can be found at Annex E.

Section 2

Following up the previous joint report on the experience of victims and witnesses

Although this was not a full follow-up inspection to the joint thematic report, many issues pertaining to young victims and witnesses are equally relevant to adult victims and witnesses. We have where possible commented on the level of progress made against the recommendations and aspects for improvement in Section 2 of this report. This shows that out of 19 recommendations; one was achieved; two had been substantially progressed; limited progress had been made on ten and no progress on two. Due to the changing landscape three are no longer applicable and one was outside the scope of this inspection. For the aspects for improvement (AFIs) one had been achieved; substantial progress made against eight; limited progress against 11; and no progress against one. Two were no longer applicable and there were two on which we had insufficient evidence to make judgments.

SECTION 1

Chapter 1: Young victims and witnesses in the CJS - the context

1.1 *Numbers of young victims and witnesses in the criminal justice system*

- Every year in England and Wales a large number of criminal trials take place involving several hundreds of thousands of civilian witnesses, i.e. witnesses who are not police officers or paid experts. Accurate numbers are not available. The witness management information system (WMIS) of the Crown Prosecution Service provides a broad sense of numbers although these should also be treated with caution. According to this, in the 12 months to the end of February 2011, around 434,000 civilian witnesses were involved in trial cases with around 235,170 required to attend. Of the total, around 33,000 were children and young adults under the age of 18 years.

Number of young witnesses involved in trial cases in the 12 months to end February 2011

	Crown Court	Magistrates' courts	Totals
Number of young victims and witnesses (1)	11,404	21,727	33,131
Number required to attend (2)	6,868	16,890	23,758
Number who actually attended (2)	6,521	14,698	21,219

Source: police/CPS witness management information system.

- (1) Figures have been extrapolated to include estimated numbers for North Yorkshire and Kent areas that do not use the national witness management system (WMS). Some areas have only more recently used WMS comprehensively thus overall figures are likely to be understated.
- (2) If a witness is required to attend more than once WMIS will count each time they are required to attend.

1.2 *The impact of cracked, ineffective and vacated trials on witnesses*

- As may be seen from the table below, in practice less than half of all trials listed are effective in that they go ahead on the scheduled day and proceed to a result. There has been no change in the proportion of effective trials since our original review.

Numbers of criminal trials in England and Wales in the 12 months to end February 2011 and the proportion that were effective

	Effective trials	Cracked trials	Ineffective trials	Total trials
Crown Court	19,290 (44.3%)	18,429 (42.3%)	5,868 (13.5%)	43,587
Magistrates' courts	77,180 (43.4%)	69,505 (39.0%)	31,315 (17.6%)	178,000
Combined	96,470 (43.5%)	87,934 (39.7%)	37,183 (16.8%)	221,587
Combined position in 2008-09 at the time of original review	95,430 (44.0%)	83,397 (38.5%)	37,866 (17.5%)	216,693

Source: CPS witness management information system.

- A ‘cracked’ trial is where the case is ended due to a guilty plea being entered or the prosecution offering no evidence. A large proportion of trials, nearly 40%, ‘crack’ on the day, which is slightly worse than when we conducted our original review. A guilty plea can be positive for the prosecution witness in that justice is seen to be done. However a guilty plea on a trial date will typically occur several weeks or even months after the case was first heard in court and the defendant was first given the opportunity to plead. If a trial date is set the witnesses need to prepare themselves for a trial and make any practical arrangements. A guilty plea on the trial date will therefore be a less desirable outcome for witnesses than if it had been entered at an earlier stage. If the trial ends for other reasons, for instance if an adjournment is refused and the prosecution therefore offers no evidence, this can also be a negative experience for witnesses who have made the effort to attend.
- An ineffective trial is where a trial did not proceed on the day but was adjourned to another date. A significant proportion of trials are ineffective although the position has improved slightly since our original review. In many cases better case progression could have avoided this. Ineffective trials are generally a negative experience for witnesses who attend and are then required to attend on a further date. Whilst on site we found examples of witnesses failing to attend adjourned trials.
- Vacated trials are trials that for various reasons are taken out of the court lists before the date they were due to be heard and are not included in the trial numbers given in the table above. There are also a large number of vacated trials in the magistrates’ courts (vacated trial data is not available for the Crown Court): over 50,000 trials in the year to the end of February 2011, slightly worse than the position at the time of the original review. Vacated trials are normally a negative experience for witnesses, many of whom will have made arrangements to attend only for the date to be changed. This is less likely to be the case if witnesses have been notified in good time but trials are often vacated at the last minute.
- Trials can be vacated in advance due to a witness not being available on the required date or become ineffective on the day if a witness does not attend. Cracked trials can also occur due to a witness not attending or withdrawing their evidence.
- Figures are set out below.

Total trials that are vacated, or crack or become ineffective due to witness issues²

	2008-09 the time of the original review		12 months to end February 2011		Direction of travel	
	Magistrates' courts	Crown Court	Magistrates' courts	Crown Court	Magistrates' courts	Crown Court
Number of trials vacated prior to the trial date due to civilian witness issues	49,289	NA	51,865	NA	Worse	NA
Number and proportion of trials listed that crack on the day of trial due to civilian witness issues	8,434 (4.7%)	707 (1.9%)	8,966 (5.0%)	939 (2.2%)	Worse	Worse
Number and proportion of trials listed that are ineffective on the day of trial due to civilian witness issues	4,859 (2.7%)	769 (2.1%)	4,218 (2.4%)	1,012 (2.3%)	Better	Worse

Source: CPS witness management information system.

1.3 Numbers of witnesses who attend but are not required to give evidence

- It is difficult to quantify the overall impact of cracked and ineffective trials on witnesses because the number of witnesses who attend and are not required to give evidence, or those who are then required to attend on a further occasion are not systematically recorded. HM Courts and Tribunals Service (HMCTS)³ undertakes a twice yearly two week survey to determine witness waiting times and while the young witness data they collect is based on small sample sizes and is not reliable, it suggests that a large proportion of young witnesses who attend are not required to give evidence.

1.4 The broader context

- A number of major changes have taken place since our original review in 2009 which have already impacted or are expected to impact on the service provided to victims and witnesses. These include a new Government and its response to the severe economic situation. The full impact of the budgetary cuts across the CJS and in particular on the services provided to victims and witnesses is not yet clear. While the Government has yet to set out its detailed strategy and plans in relation to victims and witnesses, there is a sense emerging that there will be a need in future to prioritise victims and witnesses who are most vulnerable, and/or those who require higher levels of support and ensure resources are better focused on these.

² This can be for a variety of reasons for example the witness failing to attend court, the witness attends court but refuses to give evidence etc.

³ Formerly HM Courts Service.

- A Commissioner for Victims and Witnesses was appointed in March 2010. The Commissioner published her first report in July 2010⁴ which gave an overview of the service to victims and witnesses and the key challenges faced. The Commissioner found that although there have been great improvements in the way that victims and witnesses were treated there was still a long way to go before they could truly be said to be at the heart of the criminal justice system. In relation to young witnesses in particular the Commissioner highlighted the lack of a Practice Direction to the adult courts that would reflect how daunting the experience of appearing before them would be.
- The Office for Criminal Justice Reform (OCJR) responsible for implementing the Government's criminal justice policies including those in relation to victims and witnesses has been disbanded. Its responsibilities have been taken up by the newly formed Criminal Justice Reform Directorate (CJRD), part of the Ministry of Justice (MoJ). The Victims and Witnesses Unit that formed part of OCJR continues as part of the new directorate.
- The national Victim and Witness Care Delivery Unit (VWCDU) which oversaw the original setting up and in recent years the operation of witness care units across England and Wales was disbanded on 1 September 2010. The unit had been jointly managed by the police and CPS. The catalyst for change was the CPS Capability Review that resulted in key elements of delivery previously handled by the unit being devolved to CPS areas. There continues to be senior CPS and Association of Chief Police Officers (ACPO) policy leads for victim and witness issues.
- The Government has taken a new approach to national performance management with the dropping of Public Service Agreement (PSA) targets, including those for victim and witness satisfaction, and a move towards locally based performance management. In line with this approach the CPS no longer sets national targets for victim and witness performance. Key aspects such as witness attendance and performance in relation to the Direct Communication with Victims (DCV) scheme will continue to be monitored at national level but performance management will be the responsibility of CPS area managers. In HMCTS a review of headquarters and operational delivery management has led to a reduction in the dedicated policy posts that promoted service improvements for victims and witnesses. Performance measures are currently still being developed as part of a Ministry of Justice Transparency Framework and performance will be managed regionally. During the inspection fieldwork, in the police forces visited there was very little evidence of victim and witness issues being subject to police performance management. The central funding for Local Criminal Justice Boards (LCJBs) ended in March 2011. At the time of writing it was not clear how many of these would continue funded by agency contributions at local level.
- In July 2009, shortly after our initial review was published, a report entitled *Measuring up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings* was published. This was commissioned by the Nuffield Foundation and the NSPCC and provided a valuable starting point for this review. The inspection team were fortunate to be able to consult about the key issues and methodology with some of those associated with that report at the beginning of the inspection. A follow-up report was published in June 2011 that summarised progress against the report's recommendations and reported the outcome of two seminars on how best to deal with young witnesses. HMCPSI was represented at one of these seminars.

4 *The poor relation - victims in the criminal justice system.*

- Finally, as this report was being written the Advocacy Training Council, a committee of the Council of the Inns of Court published a report by its Vulnerable Witness and Defendants Handling Working Group. The report was entitled *Raising the Bar; The handling of vulnerable witnesses, victims and defendants in court*. The report deals in particular with advocacy matters relating to young victims and witnesses, which is outside the scope of this inspection but also covers some similar issues to those covered by this inspection, and makes many similar findings.

Chapter 2: Initially identifying the needs of young victims and witnesses and recording their evidence

2.1 *Identifying the needs of young witnesses and the most appropriate special measures*

- When police officers initially meet young victims and witnesses, they are required to make an early assessment of their needs and use this as the basis for determining whether statement is obtained either in writing or by way of a video interview. The assessment is also the basis for determining whether any other special measures will be appropriate to help the witness give their best evidence in court. This process is referred to as achieving best evidence (ABE).
- Knowledge and understanding of police officers about the various special measures and how they work was mixed in all forces visited, with the greatest knowledge being held by specialist officers. In particular many front line police officers did not appreciate that a young witness giving evidence by TV link could be seen by everyone in the courtroom, including the defendant.
- The video recording of the statements of young victims and witnesses is often considered as being the most appropriate method of capturing their evidence. They are entitled to give their evidence in this way as they are automatically deemed as vulnerable because of their age.⁵ The witness's interview with the police is visually recorded and played as their evidence in chief at the trial, which is usually described as the 'ABE DVD'. There is a tendency, for historic reasons, to assume that the ABE interview will be played and a live link used for cross examination. In practice some young witnesses may prefer to give live evidence in the courtroom or from behind a screen. Under s.98 and s.100 Coroners and Justice Act 2009 child witnesses may "opt out" of giving their evidence by either a video recorded interview as evidence in chief or by means of live link or both. If they wish to do so, there is a presumption that they will give their evidence in the courtroom from behind a screen. Should they not wish to use a screen, they may also be allowed to opt out of using it, subject to the court's agreement.
- Our fieldwork found that young victims and/or their parents/carers were not always consulted fully in the decision to take a written or video recorded statement as they should be. For example, in the inspection file sample for only 49 out of 94 witnesses where special measures were adjudged as relevant to their circumstances, was there evidence that special measures had been explained to the witness and in only 24 of these cases had their views actually been recorded. Officers clearly recognised the need to consider video recorded interviews in certain circumstances, such as when a child was very young or where numerous serious sexual offences were alleged to have been committed. Where the offence was less serious and/or involved older children, there was a greater likelihood of a written statement being taken. This decision is a critical one, and it was clear that front line police officers did not fully consider the implications of their decision on the quality of evidence during the trial which in many cases may be many months or even over a year away. It is to be hoped that the implementation of the opt out described above will encourage more discussions with young witnesses about how their best evidence might be given.

5 The Youth Justice and Criminal Evidence Act 1999 which made available special measures, originally defined a child witness as being under 17. Under the Coroners and Justice Act 2009 this increased to all children under 18 and came into force on 27 June 2011. Special measures also include live links which enable the witness to give evidence during the trial from outside the courtroom via a televised link, screens around the witness box to shield the witness from the defendant, evidence given in private in sexual offence cases and cases involving intimidation, removal of gowns and wigs by barristers and judges, examination of the witness through an intermediary appointed by the court and aids to communication for overcoming physical difficulties with understanding or answering questions such as alphabet boards.

Case study: In one case reviewed three victims aged 10, 11 and 12 had been threatened and robbed in a local park and were terrified to go back there. Written statements had been taken from all three with no apparent consideration of whether video interviews would have been more appropriate. Had their evidence been recorded it could have been played in court and prevented these young vulnerable witnesses having to go through giving oral evidence in chief, albeit via the live link, seven months after the incident when it would not be as fresh in their minds. (This would not have negated the need to be cross examined via the live link).

GOOD PRACTICE

In Humberside, all crimes that involve a young victim or witness are passed initially to the police Public Protection Unit where an assessment is made as to how best to obtain the evidence, whether by written statement or video interview. A vulnerable victim officer visits the home of the witness to make a further assessment, if required. This helps achieve better consistency in achieving best evidence.

- Some front line police officers indicated they were reluctant to give witnesses too much information at the outset in the belief that to give the witnesses full details would put them off giving evidence at court. As a result of this the needs assessments entered on the rear of the MG11 form are often incomplete. In our file sample in only 51 out of 106 cases was a needs assessment completed for the witness.
- Making terminology clear can enhance the understanding of busy practitioners, and make them more likely to use the system as intended. For example the use of the word ‘vulnerable’ causes confusion because it is understood to mean vulnerable in its wider dictionary sense rather than the legal definition which includes young witnesses. Some older teenage witnesses would not be considered vulnerable in a common sense way but could be entitled to special measures. Some interviewees also confused the terms ‘special measures’ and ‘special needs’ which has a specific meaning in an educational context. There is a strong argument for saying now that what are currently known as special measures are so commonplace and apply to so many witnesses so that they are not special any longer.
- Information provided by the police should indicate specifically what would assist the witness. For example in the cases examined the police frequently noted that the witness had “learning difficulties” and the implications they may have for the witness and their ability to give evidence or what assistance if any they may require, were not defined.

Case study: A young witness aged nine attended court to give oral evidence as the statement was not ABE video recorded. The officer in the case (OIC) who was present at court on the morning of trial asked the Witness Service to be with the witness in the video link room and to make sure the witness understood the questions he would be asked because the witness had “some problems” and “learning difficulties”. Nothing had ever been recorded on the file about this and a full needs assessment had not been carried out. Special measures (for the witness to give evidence via the TV link) had been applied for because of the age of the witness and the violent nature of the offence rather than because of his learning difficulties. The defendant subsequently pleaded guilty and the witness did not have to give evidence.

GOOD PRACTICE

Gloucestershire Constabulary has customised its MG11 witness statement and needs assessment form to incorporate a brief definition of a vulnerable and intimidated witness to assist officers when completing the form.

- Despite officers being unfamiliar with the legal definition of what is a vulnerable and/or intimidated witness, young victims and witnesses were in the main part correctly identified as vulnerable on the written statement MG11 form. In some cases, however, it was clear that officers had missed the opportunity to highlight particular needs that they were clearly aware of.
- When an officer identifies that a witness is vulnerable or intimidated, they should discuss with them whether special measures are appropriate. In the case of a child who is vulnerable by age this should be with the parent or carer of the young person. If they are appropriate then the officer should complete a form, MG2, to accompany their submitted file to the CPS. MG2 completion varied significantly. Only in one area out of five were these forms completed as a matter of course. In two of the remaining four forces, we saw no MG2s at all on the files we viewed. The impact of failure to complete an MG2 is that the CPS has to request that witnesses are contacted again for their views. This can build in delays in making applications for special measures. In our case reviews in only 30 out of 85 occasions where an MG2 was required for a witness, was it actually completed by the police.
- Realistic assessments of whether a witness is likely to attend court or not enable more targeted support to be given to try to reassure those who are worried about giving evidence. This in turn may reduce the number of cases that ultimately fail due to the withdrawal of the witness from the process and avoid the cost of prosecuting these failed cases. It would also assist the prosecutor in assessing from the outset the reliability, as well as the credibility of the witness in considering whether the case meets the Code test⁶ and is therefore suitable for prosecution.

Case study: Inspectors saw an MG11 where, in his statement, a 16 year old witness mentions ‘I’m dyslexic, so I’m not very good with distances’, yet on the back of the form where it is asked ‘Does the person have any special care needs?’ the ‘no’ box is ticked.

6 See definition at page 89.

- The CPS is also not sufficiently proactive in requesting information regarding witness needs if it is not on the file at the charging stage. There was very limited evidence in the files reviewed of early special measures discussions with the police and CPS being held, or indeed special measures meetings between the CPS and witnesses being held.⁷ In our file sample only five out of 106 young witnesses had such a meeting and it was only considered by the prosecutor for one witness at the charging decision stage.

2.2 *Early investigative advice*

- In all five areas visited it is apparent that the police do not regularly seek early consultations (EC) to obtain early investigative advice (EIA)⁸ from the CPS and virtually never before carrying out the ABE video recorded interview of young and/or other vulnerable and intimidated witnesses. Of the 60 cases considered in our file sample EIA was requested in seven cases by the police. EIA was given in 16 cases, the seven where it was sought and in nine other cases when a pre-charge decision was asked for but the prosecutor gave EIA instead.
- This is particularly important in complicated and sensitive cases where the specialist advice of experienced prosecutors could for example assist in planning the ABE video interview so it is appropriately structured, focussed on the key legal points and detailed regarding the evidential matters that need to be covered with the witness.

2.3 *Obtaining and recording the young witness's evidence*

- In four out of the five police areas inspected, police officers said that the main reason for not requesting video recording of the interview was due to difficulties in obtaining the services of a video interviewer. Officers were themselves having to identify someone trained to do this and approach them to arrange for a video interview to be done. In some instances this relied on them knowing an officer on their shift who had been appropriately trained. In some of the forces visited there was a wait of up to six weeks for an appointment with a trained interviewer. Some officers stated that unless the offence was a serious one or the child was extremely young, they would press on and take a written statement regardless of the possible impact on the quality of evidence given later in court. In our file sample 38 out of 57 special measures applications made were for the use of ABE video interviews for young witnesses.
- In two areas officers reported a noticeable decline in the use of ABE interviews.

GOOD PRACTICE

Nottinghamshire Police trains all Criminal Investigation Department (CID) officers in video interviewing as part of their detective training course. They then support uniformed colleagues by undertaking video interviews when the need arises.

7 Early special measures discussions are held between the police and CPS to discuss whether a witness would benefit from special measures. The witness may also have a special measures meeting with the CPS prosecutor to discuss matters related to special measures decisions.

8 See glossary in Annex F for definitions.

2.4 *Quality of visually recorded statements*

- Many of the judiciary and prosecutors interviewed were critical of the quality of video interviews for the following reasons;
 - They are overly long in duration particularly in relation to the rapport building by the officer and ascertaining whether the young witnesses understood the difference between truth and lies.
 - The witness often gives a clear account at the outset which is then gone through in great detail. Rather than clarifying ambiguous points, this often creates confusion and repetition.
 - There was little evidence that officers had planned the interviews in advance of conducting them.
 - Direct questions to clarify inconsistencies or anything which may appear to be untrue or inaccurate are often not put to the witness.
 - Leading questions are asked of the witness.
 - Whilst it is understood this is an investigative tool it may also be played as evidence in chief in court and officers do not think of the impact on the trial of their language and conduct.
- Specialist officers expressed the view that keeping interviews brief was not always possible or advisable, particularly when dealing with complex offences which were sometimes committed over protracted periods of time. At the interview stage it was not knowing what may later become relevant at trial.
- New guidance on ABE video interviews was circulated to all forces in England and Wales in March 2011,⁹ and takes into account the changes recommended by ACPO to conducting recorded interviews. It recognises the need for interviews to be more concise and focussed, with some aspects of the interview not now required to be recorded, for example the rapport building between the interviewing officer and the young witness. Some forces were already aware of the changes taking place and were preparing to roll out a refresher training programme to all trained staff. Others were unaware of the change.
- Facilities for conducting video interviews were mainly of good quality, although there were isolated examples of poor suites. Gloucestershire Constabulary has a central suite with excellent facilities and easy to operate equipment. In another force, one suite were described as “dire” by trained interviewers; this was principally due to the poor quality and unreliability of the recording equipment which was frequently out of service and away being repaired.

GOOD PRACTICE

Lancashire Constabulary has purchased mobile recording equipment which allows video interviewing to be done in a victim’s home. An experienced interviewer said that this had improved the quality of evidence, as the young witnesses were more relaxed and comfortable in their home environment.

⁹ *Achieving best evidence in criminal proceedings - Guidance on interviewing victims and witnesses and guidance on using special measures* Ministry of Justice Revised Edition March 2011.

- The positioning of cameras in interview suites was also the subject of adverse comment; it was felt that often the camera was too far away from the witness to give a clear image of their face. This could be exacerbated if the TV monitors in the courtroom were small and/or distant from the jury. In one area a judge who had been frustrated about a number of poor quality video recorded interviews, visited the recording suite to make recommendations on how to improve recordings in the interests of justice.
- In one case reviewed as part of this inspection, the parent of a young witness was present at the recording suite in the monitoring control room whilst the interview was being recorded. The parent was also a witness in the case and therefore should not have been present. Whilst it is important that young witnesses are fully supported care must be taken to ensure the supporter is not a witness or potential witness in the case.
- No force inspected routinely assessed the quality of ABE video interviews. Some staff interviewed had been trained many years previously and had never been formally assessed in the role since. A minority had received some ad hoc feedback from CPS prosecutors, who had been in court when the video interview was played. This, however, was the exception rather than the rule.

GOOD PRACTICE

Humberside Police was conducting a quality audit at the time of our inspection. This consisted of a dip sample of 20 ABE interviews being checked by training staff for quality, with the results being fed back to the interviewer and their supervisor. The results of this audit will also inform area trainers of aspects to concentrate on in the delivery of training.

RECOMMENDATION

Police forces should put into place a system that provides feedback to continuously improve the quality of achieving best evidence video interviews.

- ABE video recorded interviews generally need editing prior to trial to remove extraneous material that has no evidential value, and where possible reduce the length of the recording. Edits are usually proposed by the prosecution and agreed by the defence in advance of the trial, although not always. To enable this to occur easily a transcript should be obtained to assist the court if the audio quality of the video interview is poor. In some areas the CPS does not obtain transcripts due to the cost, predominantly for trials in the magistrates' and youth courts. Editing is not always done and prosecutors have to manually stop and forward the video interview over inadmissible parts during a trial, which is unsatisfactory.
- Officers in one of the five police areas said that they were frequently required to take video interview DVDs from court to be edited on the first day of the trial. This sometimes led to delays in the trial getting started, with the associated impact on witnesses waiting longer to give their evidence. Last minute edits should not be required on the day of a trial if the necessary preparation has been made.

2.5 *Involvement of intermediaries at this stage*

- Police knowledge of intermediaries, and how these could provide assistance at the interview stage¹⁰ was poor, even amongst some specialist officers who conducted video recorded interviews. Surprisingly few specialist police officers could provide examples of cases where an intermediary had been used. Any examples provided indicated that intermediaries were mainly employed after the ABE video interview had been conducted and in order to prepare for the court process, at the suggestion of the CPS reviewing prosecutor.
- Where the services of an intermediary had been sought at an early stage, officers and prosecutors were able to articulate clear benefits from having done so. Good practice in this area, and for the wider use of Registered Intermediaries is contained in a useful report¹¹ published in December 2011.

GOOD PRACTICE

In Humberside, a specialist vulnerable victim officer dealt with a 14 year old victim who had the learning age of a six year old. She requested an intermediary to make sure that the questions would be pitched at the right level in the video interview. The intermediary helped construct the questions in an appropriate manner, a process described as “very valuable” by the officer.

RECOMMENDATION

Police forces should raise awareness of the benefits of intermediaries and ensure this is considered at the pre-interview stage.

2.6 *Ensuring young victims have access to therapy*

- Young victims, particularly victims of sexual and violent offences, are often traumatised by their experiences and need early access to therapy to help them recover from their ordeal. Therapy can involve counselling and/or psychotherapy. However there is often no immediate access to such therapy for young victims. There are also dissenting voices among criminal justice professionals who believe that therapy should not be commenced until after the conclusion of the trial. This is due to the possible disclosure of details of the offence by the victim to the counsellor, potentially jeopardising the case.

10 The national guidance on ABE states: “An intermediary may be able to help improve the quality of evidence of any vulnerable adult or child witness (as defined in Section 16 Youth Justice and Criminal Evidence Act 1999) who is unable to detect and cope with misunderstanding, or to clearly express their answers to questions, especially in the context of an interview or while giving evidence in court.”

11 ‘Registered Intermediaries in action’ Messages for the CJS from the Witness Intermediary Scheme SmartSite Joyce Plotnikoff and Richard Woolfson Lexicon Limited Funded by the NSPCC and Ministry of Justice.

- In two of five areas, child abuse investigators said that CPS prosecutors had instructed them not to disclose details of the offence to counsellors helping child victims; the counsellors, however, were unable to help the children without discussing aspects of the case. There is official guidance¹² on this specific subject which states that ‘those involved in the prosecution of an alleged abuser have no authority to prevent a child, vulnerable adult or intimidated witness from receiving therapy’.
- CPS prosecutors spoken to voiced concerns over therapy and the possible evidential impact on cases if disclosures were made to third parties by a witness that differed to those in their evidential statements or videos. In addition obtaining copies of records from therapists to consider for disclosure purposes can be problematic.

Case study: In one observed case the parents of a young witness who had been sexually assaulted wanted to obtain therapy for the child but were advised about the possibility of it adversely affecting the prosecution so felt unable to seek therapy until after the trial. The case then took over 12 months to reach an effective trial date. Although the parents were not advised that therapy could not take place, the manner in which it was discussed with them affected their decision.

- There were some excellent albeit isolated examples where support had been provided to young victims and agencies had worked together to ensure that there was early access to therapy.

RECOMMENDATION

The CPS should ensure that all prosecutors are familiar with the guidance regarding the *Provision of therapy for child witnesses prior to a criminal trial*.

GOOD PRACTICE

In Nottingham, the Victim Information Project (VIP) is currently being piloted to provide an enhanced package of support for children and families living within the Nottingham City area. The service has been commissioned for a 12 month period, and supported by Victim Support and it commenced in December 2010. Children who have been referred following a disclosure of child abuse or neglect and who meet referral criteria for the Nottinghamshire Police Child Abuse Investigation Unit (CAIU) are eligible to receive:

- an early psychosocial needs assessment with a face-to-face interview with parent/carer (and child if appropriate);
- a specially developed victim information pack;
- a named victim care worker to act as link between local services and victims for the duration of the investigation and criminal proceedings; and
- a follow-up interview with parents and child after a period of “watchful waiting” to further determine the needs of family members for referral to appropriate services at this time.

The pilot is being evaluated by Nottingham University.

¹² *Provision of therapy for child witnesses prior to a criminal trial: Practical guidance* CPS and the Department of Health with the Home Office 2001.

- Although the above pilot is an excellent example of inter-agency work, the key to its sustainability will be the ongoing funding arrangements beyond the pilot phase. Victim Support has pledged to identify resources to ensure the work continues into a second year subject to successful evaluation, but it is as yet unclear how financial constraints will impact on the service beyond this timescale.

2.7 *Refreshing the visually recorded evidence before the trial*

- The viewing of their video interview by a young witness before the day of trial is recommended by the *Achieving best evidence in criminal proceedings* guidance. However, not all witnesses are given the opportunity to do so and arrangements for doing this varied between the areas. The role was shared between the Witness Service and the police. The officer in the case was frequently the one responsible for arranging viewing, although one force had innovatively used officers on restricted duties to meet witnesses and let them view their evidence. Another option was for the DVD to be shown at court on the pre-trial visit or on a separate occasion. Many specialist officers spoken to, such as those on child abuse investigation units, said that they tried to arrange this before the day of the trial but sometimes it had to be done on the day, either because the witness was not available or because their workload had not permitted it. The lack of clarity about responsibilities for ensuring that the video was viewed at an appropriate stage led to some witnesses not having that opportunity. Guidance¹³ stresses that how, when and where memory refreshing takes place should be decided on a case by case basis, with the overriding aim being to enable the witness to give best evidence in court. However these decisions should be made within a clear understanding of the options available and there should be clarity of understanding between agencies about who will make the arrangements.
- When refreshing was left to the day of trial it meant that the witness had to watch the DVD once as a refresh and then again when the trial commenced. This had the potential to cause difficulties for the proceedings because TV equipment used to play the DVD would also sometimes be required for other trials and as the interviews were frequently over an hour long this was disruptive for the young person and the court. Otherwise in the magistrates' and youth court the DVD may not be seen in advance of it being played as evidence in chief during the trial. Witness Service and Young Witness Service staff highlighted the fact that very often the interview was recorded some weeks or months before the trial, and the young people were often initially distracted by what they were wearing or how they looked or sounded. It is not good practice for the first opportunity to review the interview to be when it is being played as evidence in chief during a trial.
- Some young witnesses, particularly those who may require the services of intermediaries, may find it very difficult for various reasons to sit through the playing of their recorded ABE interview in court. In one case reviewed the witness had severe ADHD¹⁴ and would have found it very difficult to concentrate and sit through the interview being played in court. In such cases, it would seem to be good practice to play the witness interview to the court without the witness sitting through it and have them attend court only to be cross examined provided they have had the opportunity to refresh their memories before hand but at a pace and in an environment suited to their requirements.

13 CPS Policy Bulletin/Legal Information P/LI/11/10: CPS policy on refreshing memory and viewing ABE evidence in chief post Malicki and Barker.

14 Attention deficit hyperactivity disorder see glossary Annex F.

GOOD PRACTICE

In Gloucester there was a new practice for particularly vulnerable witnesses. On the day of the trial the police show the DVD to the witness at their home and then bring them in to court for their cross examination. This minimises waiting time on the day, enables the effective use of court resources and ensures that the witness sees the evidence only once in familiar surroundings shortly before they are questioned about it.

RECOMMENDATION

Crown Prosecution Service, police, witness care unit, HM Courts and Tribunals Service and Witness Service should have a clear local agreement setting out processes for witnesses to refresh their memories by watching their video recorded achieving best evidence interview before the day of trial.

2.8 *Use of video recorded evidence at court*

- At the plea and case management hearing (PCMH), advocates, who are not always the trial advocate, have not always viewed the ABE recorded interview. This can lead to delays in agreeing the editing of ABE video interviews when advocates do not wish to tie the hands of the subsequent trial advocate. In some instances, predominantly in the magistrates' and youth courts, advocates conduct trials without having viewed the recorded ABE interview, which is clearly undesirable. This inevitably impacts on the quality of the prosecution of the case.

Case study: In two observed cases in different areas the trials were being conducted by counsel as agents for the CPS. Neither had seen the files before the morning of trial and in both instances although the files were brought to court the DVDs of the ABE recorded interviews were not with the files. In both cases there was a delay whilst they attempted to have the DVDs brought to court to start the trial. The witnesses were kept waiting as was the court, whilst this was resolved. Both counsel stated that this was a regular occurrence and neither had been able to view the DVDs before conducting the trials.

RECOMMENDATION

Sufficient time should be given to advocates to enable the achieving best evidence recorded interviews to be watched in preparation for trial.

- Despite the fact that recorded evidence is used regularly, difficulties in getting the DVDs to play on the court equipment still occur on a frequent basis. Such problems were observed in several cases in different areas by inspectors. Court equipment varies not only between areas but within different courtrooms in the same building. So if the DVD is tested at PCMH on the equipment in one courtroom but the case is listed for trial in another it still may not play.

Court staff accepted that they sometimes had difficulty in operating equipment that was not faulty, particularly if it was difficult to access or differed from other equipment that they were more familiar with. HMCTS has recognised this and in 2010 issued problem solving guidance. We were also told that funding would be available to upgrade the video equipment at some courthouses. Inspectors welcome this development. It is difficult to overstate the frustrating impact of essential technical equipment that does not work on a trial and on young witnesses.

Case studies: At the start of one observed trial, the ABE DVD would not play on the court equipment. At PCMH it had apparently been playable on the court equipment but this was in a different courtroom. The judge tried the disc on his laptop and again it worked. The case moved to a different courtroom but this all took time to resolve, causing delay to a waiting witness of over an hour.

Another case involving a young witness was listed for a second trial date some four months after the first, due to the failure of the ABE DVD to play correctly on the court equipment on the first trial date.

A further case observed involved two young witnesses and it was also a second trial date. The case had been adjourned for five months and on the morning of the second trial date there were problems - the DVD equipment at court could not play the DVD correctly. This led to a further delay in getting the trial started as the external IT contractor had to be called to fix the equipment in this courtroom. Inspectors were told that the equipment frequently did not work.

RECOMMENDATION

HM Courts and Tribunals Service should ensure that facilities to show electronic evidence consistently enable trials to proceed effectively.

- Some practitioners and members of the judiciary are not keen on evidence being given via video recorded interviews or the live TV link. Instances were reported to us of pressure being put on witnesses to go into the courtroom and give evidence from behind screens instead. It is vital to discuss the options available with the young witness to ensure they understand what their choices are, but no pressure should be exerted upon them, and the decision should be theirs.
- There is a much voiced perception that the use of video recorded interviews and TV link causes trials to be lost because they have less impact than a witness actually in the courtroom. Inspectors therefore welcome the decision of the Nuffield Foundation to fund research by University College London on the impact of special measures on jury decision making. Separate research is also being conducted on special measures in rape trials to explore their impact on mock juror deliberation. What must be borne in mind however is that some cases would not be proceeded with at all if ABE interviews and the use of the TV link were not available; some witnesses would not agree to give evidence without them.

Chapter 3: Special measures assisting young victims and witnesses to give their best evidence

3.1 Detailed needs assessment prior to trial

- In cases that proceed to trial, detailed needs assessments should be carried out. This should capture whether any special measures may be needed to assist witnesses, if they have not already been picked up by officers in the initial needs assessment. However we found that detailed needs assessments are not always done and those that are, are not always fully completed by the WCUs and therefore the special needs of witnesses are not being identified until the day of trial. The Witness Service made the point that needs assessments were usually only undertaken once, whereas the needs of a young witness could change over time. This could, for example, lead to an initial rejection of Witness Service support not being revisited as a trial came closer.

3.2 Applying for special measures in good time

- Although late applications for special measures occurred less often for young witnesses, than for witnesses more generally, there were still some late applications with some being made on the day of trial. We still saw cases where witnesses attended court believing they had special measures when in fact they had not even been applied for. In such cases a witness does not have the reassurance of knowing that they have been granted in advance. The improvement in timeliness of applications is primarily as a result of oral applications being made at hearings when a trial date is set.

GOOD PRACTICE

In some courts, mainly magistrates' and youth courts, local practice is for oral special measures applications to be acceptable in cases where young victims and witnesses are automatically entitled e.g. by reason of age and the offence is violent or sexual in nature. This reduces unnecessary work and speeds up the process.

- In the case of young witnesses late applications can occur because of misapprehensions about what special measures will entail. Commonly, it can become clear to a young witness at the pre-trial visit that they will be visible in the courtroom when giving evidence by TV link. When they become aware of the reality, often quite close to the hearing date, it can cause confusion and anxiety. This can lead to a late request to change the special measures applied for, for example to switch to giving evidence from behind a screen, or to request that the TV link is used but that the screen is obscured to the defendant.¹⁵
- There appears to be a perception by some courts that some witnesses are initially happy to come to court and give their evidence but then change and want to have special measures. The court may feel that special measures are being pushed by WCUs, potentially prejudicing the rights of the defendant unnecessarily. The court may then request a new supporting statement to establish the reason behind the change.

15 In reality, if identification of the witness is the issue, the defendant is already likely to have seen the face of the witness as the ABE DVD is disclosed to the defence, but this is not always made clear to the witness.

- However, in both the above situations what may appear as a change can simply be the result of police officers failing to explore the witness's wishes or concerns when the original statements and needs assessments were made. This further underlines the essential importance of police officers being thorough in their discussions with young witnesses and considering the needs of achieving best evidence during the trial.
- Systems and processes within the CPS that deal with case preparation and progression are not always as effective as they should be to ensure that special measures applications are prepared and applied for within the time limits. The CPS is monitoring both its case preparation and its care of victims and witnesses.¹⁶ In the file sample six out of 57 special measures applications were out of time. All of these were where written applications were required.

Case study: A case was observed at court which, based on the evidence, made it very likely that special measures would be required for a witness. Despite this, the application had not been made within the prescribed time limits and the reason given was lack of review by the prosecutor, absence of staff and volume of work. An application was made on the day of trial, out of time, for the ability to give evidence by video link. The court permitted special measures in the interests of justice but granted screens, not the video link sought. The witness was upset and initially refused to give evidence although later relented. The defendant then pleaded guilty.

- Late applications can also lead to listing problems for the court which may then struggle to find courtrooms with the appropriate equipment available to facilitate cases where special measures are required.

Case study: Inspectors observed a road traffic case involving late special measures applications for five young witnesses. The OIC told inspectors that at the outset he had taken advice from the case preparation team about special measures and been told that the court would not grant them in such circumstances so there was no point in covering the issue in statements or on the MG2. The CPS made late applications for special measures but the defence challenged these as there was no supporting evidence from the witnesses. Four of the young witnesses had pre-trial visits and expressed a desire to give their evidence via the TV link. The WCU, the Witness Service, and the Young Witness Service were well aware of the lack of certainty for the young witnesses about whether they would have special measures before the day of the trial and raised it with the CPS. No additional work on the applications was undertaken between the application hearing and the trial date, and the prosecutor was only allocated the case the afternoon before the trial. Late applications were made on the day of trial and agreed by the bench. However by then the case had not been listed in a courtroom with a TV link and the case had to be moved to a different courtroom which delayed the commencement of the trial until lunchtime. The impact of the late applications was to cause significant uncertainty and delay for five young witnesses and their families.

16 Core Quality Standard 5: We will prepare all our cases promptly and in accordance with the Criminal Procedure Rules so that guilty pleas can be entered at the earliest opportunity, and fair trials can take place on the appointed dates.
Core Quality Standard 7: We will assess the needs of victims and witnesses, keep them informed about the progress of their case and seek appropriate support to help them give their best evidence.
CPS Core Quality Standards March 2010.

- In order to do its job effectively the Witness Service also relies on good information from the WCU and CPS. One particular concern raised in three areas is that the Witness Service is not always sent details regarding special measures for witnesses or details of special needs that they may have. This makes it difficult to plan staffing and other requirements to offer the best service to young witnesses on the day.

3.3 *Use of intermediaries at court*

- There are mixed views from the judiciary and CPS staff regarding the value intermediaries have added to those cases in which they have seen them used. They are not used in substantial numbers in any of the areas visited. Comments inspectors received on their value to and impact on a case varied from them being regarded as very good to the view that they simply sit with the witness and appear to do very little. However it is accepted their presence alone may be of benefit to the witness.
- Examples were also given where intermediaries had caused problems in cases. For example, in one case the intermediary changed the questions being asked when trying to communicate them to the witness. In another case the intermediary was reported to have made inappropriate comments to the witness to the effect that they would not be believed and would have a very difficult time under cross examination.
- Generally there is a lack of detailed knowledge within the police, CPS and courts as to exactly what intermediaries are available and what skills they possess to assist witnesses with specific difficulties. There is a need to improve the knowledge and understanding about intermediaries generally and the value they may bring in terms of improving communication. Some training on the role and use of intermediaries was given when they were introduced in 2008, to police, CPS and court staff, but staff spoken to indicated that there had been little since.
- Those using intermediaries reported that they are usually able to access them promptly through the national matching service. However, it is not always possible to get locally based intermediaries who have the required skills for the case, to help keep costs down and enable more contact and better rapport to be established with the witness prior to the trial.
- Using management information, recruitment campaigns in 2009 and 2010 sought to address gaps in service provision identified for specific skill-sets and geographic areas.
- All those using a Registered Intermediary should complete and submit the user feedback pro-forma provided but currently the feedback is received in only 46% of cases. Feedback is an important and valuable element for identifying ways in which the Witness Intermediary Scheme can improve and potential training and professional development needs for the intermediary.

3.4 *Support to young witnesses as they give their evidence*

- Arrangements for supporting young witnesses in the TV link room vary greatly. At most courts visited in this inspection Witness Service volunteers accompany the young witness, and in some courts the usher is also present. In a few courts only the usher attends, the Witness Service staff are not permitted to accompany the witness. Parents of young witnesses sometimes want to accompany them and some young witnesses want their parents present and again practice varied between courthouses. At most courts the parents' presence is actively discouraged by the CPS, Witness Service or judiciary. However some judges were more relaxed, so long as the parent was not themselves a witness. The Witness Service should not take upon itself the role of preventing parents from pursuing this option. There are good reasons for being cautious but it is for the courts to set the expectations and determine any applications.
- At one of the inspection sites inspectors were told that at the magistrates' court a young witness must have an appropriate adult present (which could include a parent who was not a witness) in order for the case to proceed. At the Crown Court across the road appropriate adults were never present, even from the Witness Service, only an usher was present when the child gave evidence and all parties believed that a parent would never be allowed to accompany their child in to the TV link room. However when inspectors raised this difference of approach with the Resident Judge he stated that he was actually open to applications to allow parents or other appropriate adults to be present. Section 102 of the Coroners and Justice Act 2009 amends section 24 of the Youth Justice and Criminal Evidence Act 1999 and provides for a specified person to accompany the witness while the witness is giving evidence by live link and states that in deciding who the specified person is the court must have regard to the wishes of the witness. The introduction of this provision may bring clarity to the options available to individual witnesses.
- The numbers of ushers and their roles and responsibilities varied. Training for ushers in dealing with the emotional needs of young witnesses is negligible and Witness Service volunteers are better trained to offer this support. The Practice Direction makes it clear that where the witness supporter is someone other than the court usher, the usher should continue to be available both to assist the witness and the witness supporter, and to ensure that the judge's requirements are properly complied with in the CCTV room. It is not clear whether this means that the usher should also remain in the video link room, but inspectors were told that many courthouses were not staffed for two ushers per trial, one to service the courtroom and the other to remain in the video link room. Ushers told us that they could not offer emotional support to young witnesses as they had to remain impartial officers of the court. HMCTS should determine a consistent position on the role, numbers and training requirements of ushers, taking into account Part III of the Consolidated Criminal Practice Direction and *Achieving best evidence* which deal with the role of those providing emotional support to young witnesses.
- Although each case is different and must be treated on its merits multi-agency witness support relies on the clarity and consistency of expectations. More serious cases move through the magistrates' court to the Crown Court and may be transferred out of the immediate area. For these reasons it is unhelpful to young witnesses and their supporters for there to be such variation in policies between different courts in the same area or between court areas.

Case study: An usher described an occasion when he was alone with a young witness in the TV link room. The witness became distressed by giving evidence and began to bang his head against the wall. The usher said that he was fortunate because the witness's mother was nearby and came to assist. The usher stated that if the mother had not been nearby he was unsure as to what he would have done - he was not even sure whether he could touch or restrain the young person.

3.5 *Other practical considerations for special measures*

- Some witnesses interviewed indicated that the quality of the TV link was still not that good and the sound kept going off so they could not hear clearly what was being asked of them.
- There was little evidence of applications for the young witness to be heard from a remote link in a different courthouse from the one in which the trial was being heard, although some good examples were mentioned which demonstrated the benefits of this approach in appropriate cases. At present when remote links are used it tends to be more for convenience reasons. Many practical reasons were cited as to why this is difficult including logistics of the prosecutor talking to the witness and location of other family members. When making an application to use a remote link for a witness consideration needs to be given to the availability of any “real” evidence or exhibits. For example using a map in the courtroom is of little use to the witness on the remote link if he cannot see it. Copies of documents to be relied upon should be sent to the place where the witness is based.

GOOD PRACTICE

In one area witnesses had attended to watch the defendant being sentenced in the Crown Court via a remote link to the magistrates' court.

In a different area in an appeal case heard in the Crown Court it was arranged for the young witness to give evidence again from the local magistrates' court rather than in the Crown Court.

Chapter 4: Supporting young victims and witnesses in the run up to the trial

4.1 *The role of witness care units*

- Over 140 witness care units (WCUs) provide support to prosecution witnesses from the point of charge to case completion. Their focus is on regular contact and keeping witnesses informed of progress in their case, together with an assessment of their needs and practical support such as assistance with transport and arrangements for childcare. WCUs are a joint enterprise between the police and CPS. In the three years to April 2010, the last point at which national figures were available, the number of police WCU staff has remained fairly static with a small (1.9%) reduction, whilst CPS staffing has fallen by 22%, although there are fewer CPS staff involved so absolute numbers are not large.
- We found many WCUs in a state of flux and change as areas seek to reduce costs. Three of the five fieldwork areas were in the process of centralising their WCU or had plans to do this. It was clear that this will involve reductions in staff, although areas are still working through the details of how the centralised units will be run. In one area visited this process appeared to have been embarked on with very little advance planning and as a result had stalled due to human resource difficulties, which could reasonably have been foreseen and planned for, leaving the current arrangements in an unsatisfactory position.
- There was a general consensus that WCUs would need to prioritise the service provided in the future to focus support on the witnesses that are most in need of it, such as children and other vulnerable and intimidated witnesses. In the absence of any detailed modelling of demand against the proposed staffing levels and potential efficiency savings, the impact of staffing reductions is difficult to forecast. There was some uncertainty as to how this might be best approached and achieved and a number of the fieldwork areas would like more central direction, sharing of practices and assistance in this respect. The CPS is currently reviewing its victim and witness commitments. As part of this project, with ACPO's support, WCUs are piloting a revised set of minimum requirements in Wales and the West Midlands, targeting WCU resources to those who are in greatest need of support. The pilots will be evaluated with a view to rolling out the revised service nationally by April 2012 if findings are positive. Good practice guidance will be issued to areas to support them in delivering the revised service.
- The key functions of the WCU are to:
 - Provide key information to the young witness.
 - Ensure that the witness is warned to attend the correct court at the correct time on the correct date.
 - Conduct a needs assessment to identify what particular support the young witness requires.
 - Facilitate meeting those needs where possible (e.g. through the Witness Service or by arranging pre-trial visits to court).
- The completion of a comprehensive needs assessment is a crucial task, requiring understanding of the impact of personal circumstances on the court process, which witnesses are unlikely to have. We found a wide variation in the ways that witness care units carried out needs assessments, two WCUs sent the majority of their needs assessments out by post whilst two did most over the telephone. In the fifth WCU, there were variations between officers as to whether the needs were assessed over the phone or by post. Needs assessments are far more likely to be accurate if completed following a conversation with the witness or their parents

and should be sent out for completion by the witness only if all reasonable attempts have been made to speak to the witness, who may not have the necessary skills to complete a written needs assessment themselves. Undertaking a needs assessment by post is contrary to guidance issued to witness care units, which indicates that it should be undertaken only in exceptional circumstances.

4.2 *Ensuring WCUs have the information they need to support and update witnesses*

- In order to perform their role effectively witness care officers rely upon accurate details being passed to them from the police files. We found that in all five WCUs staff did not always receive sufficient details to make contact with witnesses, or indeed enough detail about the case to assist their approach when they made the first telephone call with the witness. In order to find this information, staff had to spend additional time interrogating computer systems.
- In one area, the hard copy of the paperwork provided to the WCU did not include the rear of the witness statements, which contained all the relevant witness details such as the contact numbers, date of birth and whether the witness was vulnerable and/or intimidated together with the initial needs assessment. The other key information missing was whether the witness had opted out of referral to the Witness Service. In the absence of this information witnesses were asked again and refused consent, or without the prompt no referral was made. In another, details from the handwritten file produced by the officer in the case were entered onto the police case management IT system, which automatically populates the case management system used by the CPS and in turn populates the witness management system used in the WCU. However, a failure to log fully all the relevant witness details at the initial inputting stage, for example the reason for a witness being considered vulnerable or intimidated, left witness care officers in the words of one often “flying blind” when first picking up a case.
- There is a strategic objective to move to an electronic file system by April 2012. While this will improve efficiency it will be important when designing new systems to ensure WCU staff are provided with the information they need.

Case study: In one area, electronic transfer of case papers had replaced the photocopied bundle previously sent to the WCU. The new system did not allow WCU staff to access the details on the rear of the witness statements, including in particular the initial witness needs assessment. Furthermore, the CPS staff members could not access the system as they had not been vetted by the police to access the IT programmes.

RECOMMENDATION

Police forces should ensure that all relevant witness details are provided to witness care units.

4.3 *Keeping young witnesses updated about court hearings and outcomes*

- From April 2006, under the *Code of practice for victims of crime* victims of crime were entitled to receive a minimum standard of service from criminal justice agencies across England and Wales. An important commitment was to tell vulnerable or intimidated victims the outcome of court hearings promptly.¹⁷ Victims under 17 and their parents or guardians always qualify for this service. In addition to this statutory requirement for victims under the minimum requirements of No Witness No Justice all victims and witnesses should be notified of the outcome of hearings that they have been party to by the end of the working day following the court hearing. The Witness Charter reinforces this commitment but unhelpfully sets a different timescale - to notify prosecution witnesses of the outcome of a case and, if relevant, the sentence by the end of the working day after receiving this information from the court.
- HMCTS notifies the WCU of the result of court hearings that involves a vulnerable or intimidated victim within one working day of the hearing. The WCU in turn is obligated to notify the victim of the result within one working day of receiving the decisions from the court. Failure to notify vulnerable victims within a short timescale can add significantly to their anxiety, in addition to increasing the level of risk to the victim, especially where the offender is released on bail and conditions have been set.
- Some WCU staff had reported seeing their cases reported in the media before being able to update the victims properly. In three out of five areas inspected, the witness care units were unable to provide hearing and trial updates to vulnerable and intimidated victims within one working day of receipt. In two out of five WCUs, notification was considered achieved when a letter was dispatched to the victim notifying them of the outcome, and there can be a further day until the victim hears the outcome. We considered this as inappropriate practice; updates to vulnerable and intimidated victims should always be made by telephone or text message, where possible, in order to ensure timely receipt.
- In order to provide a good service to victims and/or witnesses some areas had developed additional systems to notify hearing outcomes on the day of the hearing. For example at Hull Magistrates' Court the witness liaison officer telephones the witness care unit and the Young Witness Service to notify them of hearing results on the same day. Young victims and witnesses are then notified accordingly. At Taunton CPS prosecutors notify a witness care unit hotline of hearing outcomes, which are then available for victims and witnesses, and at Birmingham Magistrates' Court witnesses are given a card which contains a dedicated telephone number at the witness care unit that they can call to be told the outcome of the trial.
- Delays in information being passed largely stemmed from convoluted operational processes that relied on information being passed between the court and the WCU at the conclusion of the trial. These processes were often found to be flawed as they relied on too many factors coming together. Performance against the one working day target was difficult to measure precisely as it depended on when the information had been received, which was not always apparent. WCU staff told us that they often had to chase results from the court as they had not yet been uploaded onto the magistrates' court computer system (Libra). Frequently, workarounds had been developed to overcome these delays, for example phoning the court,

¹⁷ Including notification of bail outcomes all pre-trial outcomes verdicts and sentences to vulnerable and intimidated victims within one working day after the day of receipt of these decisions from the court and other victims within five days.

receiving a fax copy of court results, speaking to the prosecuting lawyer or sending someone to the court in order to find out what happened. These methods of updating were less accurate and had led to incorrect information being given out.

Case study: In one area, where a court result had been obtained from reading the court file rather than waiting for the Libra update, a mother who was a victim of an assault by her daughter, was wrongly informed by the WCU officer that her daughter had been released by the court on unconditional bail. Unaware that there was a condition preventing her daughter being in contact with her, she went round to visit her. The officer in the case was made aware and the correct information was then given.

- Staff at one court told inspectors that the electronic file of priority case results that they sent to the witness care unit was not opened and enquiries from witnesses for hearing outcomes were passed from the Witness Service to the witness care unit and back to the court. In another area inspectors were told that although victims would be notified of hearing outcomes witnesses were not. If a witness wished to know the outcome of the trial they had to apply to the court in writing and the answer could take two or three weeks. This approach was adopted as a result of trying to adopt more efficient practices and was said to reduce the number of telephone calls that court staff had to answer, which freed up their time to formally record and transmit all hearing outcomes to the police within 24 hours. Although this was an understandable focus on meeting one priority it does not represent a good service from the criminal justice system to witnesses.
- The target to notify priority hearing outcomes within 24 hours has been somewhat superseded by the expectations created by social media. It has long been the case that significant trial outcomes were reported by the press and broadcasters very promptly. However these days we were told that it was common for victims and witnesses in less high profile cases to find out information about their case almost immediately through Twitter or Facebook, which are particularly heavily used by young people.
- Agencies are beginning to consider how social media can and should be utilised to provide a service and increase public confidence. For example as an experiment, results from Birmingham Magistrates' Court were sent out by West Midlands Police on Twitter throughout the morning session on Tuesday 19 April. On 20 December 2010, the Lord Chief Justice issued Interim Practice Guidance titled the *Use of live text-based forms of communication (including Twitter) from court for the purposes of fair and accurate reporting*, which was followed by a consultation on the same subject between February - May 2011. In a speech in March 2011¹⁸ Lord Neuberger of Abbotsbury, Master of the Rolls said "...It seems to me, in principle, that tweeting is an excellent way to inform and engage interested members of the public, as well as the legal profession". The direction of travel is therefore for more prompt information to be easily available about court proceedings, and there is an onus on the criminal justice system to meet the needs for victims and witnesses for accurate information from an official source in a timescale which is actually useful to them.

RECOMMENDATION

The Ministry of Justice should consider changing targets for providing updates on the outcome of court hearings to victims and witnesses to ensure they are provided with accurate information on the day of the hearing.

4.4 *Pre-trial information*

- All areas inspected ensured that Young Witness Information Packs were received by young prosecution witnesses required to give evidence at a trial. These packs usually consisted of a letter containing details of when and where the court case was to be held, an age-specific information leaflet and the Going to court DVD. They were universally found to be an invaluable resource, particularly when a support worker is able to take a young witness through the relevant sections. Concern was raised in every area about the withdrawal of the centrally produced leaflets, which had been suspended from publication due to cost restrictions; the costs in producing these had been passed on to individual areas, some of which simply photocopied the forms which had a detrimental impact on both quality and cost. However we understand that the Ministry of Justice, in response to concerns expressed, has since decided that most of the pack components will continue to be produced centrally for the 2011-12 financial year.
- Young victims and witnesses spoken to were generally satisfied with practical information provided to them, but the impact of the information was considerably enhanced by having a pre-trial visit or by the type of home visits offered by the Young Witness Services operated in two of the fieldwork areas. Although there are very few such services in the country the support provided was excellent; a support worker attends the home of any young witness who requests a visit and discusses with the child and parents/carers what will happen on the day of the trial and helps to prepare them for this (see Chapter 7).
- The Going to court DVD received a mixed reception, and in many cases young witnesses had received the DVD but had not watched it - for example none out of four witnesses aged 16 and 17 in a Crown Court case had watched the DVD that they had been sent. Of the 50 witnesses spoken to at court 21 had received and had the opportunity to watch the DVD.

GOOD PRACTICE

In Hull young people were found not to relate to the Going to court DVD very well as it was described as “too home counties”. A local youth drama group were involved making a new DVD which young local children could identify with. Sponsorship from a local business had been secured.

- The DVD was not developed to specifically meet the needs of young people. In order to be more effective the information contained in the DVD could be passed to young witnesses in a variety of mediums that are likely to be more engaging. Text and video messaging are commonly used by young people to communicate with each other, and emails with hyperlinks to video clips may attract more young people to view them, as well as be a cost effective alternative to mass production and distribution of DVDs.

- An independent domestic violence advisor (IDVA) commented that many young witnesses have seen how a video link works in the BBC TV programme ‘Eastenders’, which had helped their understanding and put them at ease about giving evidence. Consideration might well be given to utilising any relevant footage in any future publication, copyright permitting.

RECOMMENDATION

The Ministry of Justice should ensure that age appropriate communication and media options are used for conveying information to young people about giving evidence at court.

4.5 *Pre-trial familiarisation visits to the court*

- In our file sample 60 out of 70 young witnesses warned to attend court were offered a pre-trial visit. It was not possible to ascertain fully exactly how many took up the offer. At court 38 out of 50 young witnesses spoken to were aware of being offered a pre-trial visit and 20 took the offer up, albeit some on the morning of trial. Every effort should be made to ensure and encourage as many young witnesses as possible to attend a pre-trial visit. At all courthouses Witness Service and court staff said that they would offer court familiarisation, the equivalent of a pre-trial visit on the day of the trial for any witness who had not previously had one. This is a useful way to support young people but loses the advantage of giving crucial information and allaying any fears before the trial date.
- Young witnesses found pre-trial visits extremely informative, especially where they were able to view the link equipment and screens that would be used on the day. In our view this is one of the most important aspects of supporting witnesses before the trial as they are an essential method of establishing contact with the witness, dealing with any questions or fears and picking up any issues that could lead to the witness not attending the trial. Every effort should be made to ensure that as many young witnesses as possible can attend a pre-trial visit.
- In one area, young witnesses were able to practice using the link, which is considered good practice. It was clear, however, that young witnesses were often unaware that the live link would be broadcast to, and viewed by, the whole court. One Witness Service volunteer was overheard by inspectors, giving incorrect information in this regard, and so it is imperative that any person engaged in these familiarity visits is fully conversant with all special measures and their implications.

4.6 *Young witnesses or victims in custody*

- Inspectors enquired about the arrangements to provide support and information to those young victims or witnesses who were themselves in custody for other matters. Interviewees from prisoner custody and escort contractors, HMCTS and the Witness Service could not provide data on the number of times that witnesses or victims are produced from custody. However this appears to be far more common for adults than for those under 17. Many interviewees stated that they would do their best to support a witness in custody on the day of trial, but they had no clear policy or procedure to cover that situation and most doubted that they would know in advance about a witness that was to be produced from custody. Although

someone in custody would already have had some exposure to the court system they could be on remand and have had no experience of being a witness. Although absolute numbers are likely to remain low all agencies should ensure that their procedures provide equal access to information and support to witnesses who are in custody. Particular attention should be paid to ensuring that a young defendant and a witness in their case who is also in custody are not transported on the same prisoner escort vehicle, where intimidation could take place.

Chapter 5: Trial dates and scheduling of trials

5.1 *The impact on young witnesses of lengthy waits until the trial is listed*

- One of the most important issues for young witnesses is the time taken for the case to come to trial. Some young witnesses spoken to had had to wait for up to nine months for the case to be heard and felt that this was too long and increased the pressure on them. That pressure is heightened further for young victims who are witnesses, as set out in paragraph 2.6 above may have no access to therapy until the trial has been completed. For a variety of reasons some Crown Court cases can take over 12 months to be heard, although HMCTS has an internal performance target to commence 78% of cases within four timescales: 16 weeks for committals for trial; 26 weeks for sent for trial cases; 10 weeks for committals for sentence and 14 weeks for appeals.

Crown Court timeliness data

Quarter	Average number of weeks for a not guilty trial to be first heard	Percentage of sent for trial cases dealt with in 26 weeks
2010 2nd quarter	24.7	77%
2010 3rd quarter	24.7	77%
2010 4th quarter	24.1	76%
2011 1st quarter	24.1	76%

Source: Ministry of Justice: *Court statistics quarterly*.

- Decisions about the speed with which a trial is listed for hearing are for the judiciary to take, taking account all relevant factors in the interests of justice. This report does not comment on any judicial decisions but does look at the administrative system that supports the decision making process. Where useful, we also illustrate the impact of decision making on the experience of witnesses by drawing on the witness survey and case studies gathered during the fieldwork.
- Delay can particularly occur if for some reason the original trial date is vacated (i.e. a date for trial has been given but it is taken out of the list before that date) and a new date must be set that is convenient to the parties, their advocates and the allocated judge and on which appropriate court facilities are available.

Case studies: In a case involving a murder charge and several young witnesses the first trial collapsed due to problems with jurors. The case had to be adjourned. The next date available for the court, all the advocates and judge was six months later.

In one case involving two young witnesses the case was listed in September. When it had to be adjourned the next available date was the following February. The start of the trial in February was then delayed by technical problems with the DVD playing equipment in the courtroom.

5.2 *Minimising unnecessary delay*

Information

The best quality decisions about the timing of hearings are based on good quality information about the requirements of the case and its progress.

Important information required to make good decisions about hearings includes:

- The age of the witness. Many courts had published listing policies, which were written guidelines for how individual decisions should be made. These were often based on consultation with external agencies. In line with the appropriate Practice Direction,¹⁹ such policies gave a priority status to cases that involved young witnesses and victims, which makes it very important that information about the age of witnesses is provided to the court.
- The court was sometimes not informed by the prosecution or defence that a case involved young witnesses. Court staff often proactively identified young prosecution witnesses when their date of birth was recorded, for example at a PCMH, but this was not systematic. If the age of the witness is not known it can result in young witnesses waiting longer to be heard than necessary. It also increases the chances of the court not enquiring about any special needs, applications for special measures not being made, and the case being listed in an inappropriate courthouse or courtroom, thus increasing the chances of an ineffective trial, avoidable adjournment or delay in the trial date. A wait of six months or more between the offence and the court case is a significant proportion of a child's life. Anything that reduces that period is likely to produce a better outcome for the young person.
- Obtaining dates to avoid at an early stage. There will be dates when witnesses, the defendant, advocates, the judge or the court will not be available. It is important that such dates are provided to the court as soon as possible, but evidence was mixed about the quality of information available at the listing stage. Listing officers confirmed that they were able to take into account school attendance and academic examinations when deciding when a case was to be heard, including trying to fix a date within school holidays.

GOOD PRACTICE

In one case inspectors were informed that a young witness was given the choice whether to accept an earlier floating trial date rather than a later fixed date in order to try to ensure that her evidence was given before examinations started.

- Understanding the needs of witnesses' supporters, to ensure that the best evidence is given. A specialist police officer informed inspectors that she had provided support to a victim of sexual assault over a lengthy period, building up the trust and confidence of the victim. However the trial was listed during a period when she was on annual leave and unable to attend. This reduced the support available to the victim when it was most required. The officer was not the investigating officer, and nor was she a witness herself. She therefore felt that she had no standing in the eyes of the court. Although such information is not

¹⁹ *The Consolidated Criminal Practice Direction Annex F Listing* - effective 30 July 2010.

systematically gathered by the court, members of the judiciary and listing officers confirmed that they could take the availability of such support into account when setting a trial date if it was provided to them. Other interviewees made the point that late alterations to trial dates not only create a challenge in ensuring that the young witness can attend on a different date, but can also mean that the consistency of support is lost when support workers (e.g. from the Young Witness Service) cannot make a different date.

Case management and progression

- It is essential that cases are actively progressed by all agencies following the directions of the court. Court staff and the judiciary pointed to a strong case management ethos at trial listing hearings, with structured discussions prompted by case management templates such as the one for use at a PCMH. In particular members of the judiciary confirmed that they tested the parties as to whether the young witness was really required to give evidence. The success of such measures is undermined by the reported trend for trial counsel not to be present at the PCMH. Counsel at the PCMH stage are likely to be cautious about releasing witnesses so as not to tie the hand of the trial counsel.
- Over the past decade inter-agency case progression arrangements have become more structured, involving the use of templates and standard directions, dedicated case progression officers, inter-agency meetings in advance of the trial date, certificates of readiness to commence the trial and the analysis of why trials crack, are ineffective or are vacated after the event. There was evidence that some of these arrangements were becoming fragmented. For example:
 - In two of the areas visited, as part of the HMCTS LEAN²⁰ process, court staff had withdrawn from joint case progression meetings about magistrates' court trials. The rationale for this was that attendance at such meetings had not reduced the cracked and ineffective trial rate, attendance at meetings without the presence of the defence advocate could compromise the impartiality of the court and that court staff should not need to check up on compliance with the directions of the court - the onus should be on the parties to comply or proactively raise any difficulties with the court. In support of this position both areas pointed to no deterioration of the cracked and ineffective trial rate as a result of the new approach. The other agencies were concerned about this absence, feeling that it removed a useful channel for information that could benefit listing decisions. There is no benefit in continuing processes that do not provide value for money. However there was inconsistency of approach from HMCTS in that attendance at Crown Court and youth court case progression meetings was still considered necessary in the two areas, and the other areas visited still valued and attended case progression meetings for magistrates' and Crown Court cases. Although there could be an argument for different approaches to case progression to meet local circumstances and levels of performance, there was a sense that decisions were being taken for individual agency resource reasons rather than as an evidence based jointly agreed approach to case progression.

20 LEAN is a business improvement tool used by HMCTS to improve service delivery by eliminating waste, simplifying processes and creating capacity to do more work with fewer resources. LEAN events introduce revised processes through Standard Operating Procedures (SOPs) and utilise Team Information Boards (TIBs) which are used to manage workload allocation, identify problems within the process, skills of team members and successes achieved. The TIBs are used in conjunction with daily short team meetings to communicate the current day's work, discuss any problems that have been encountered and to clarify points of common interest to the team.

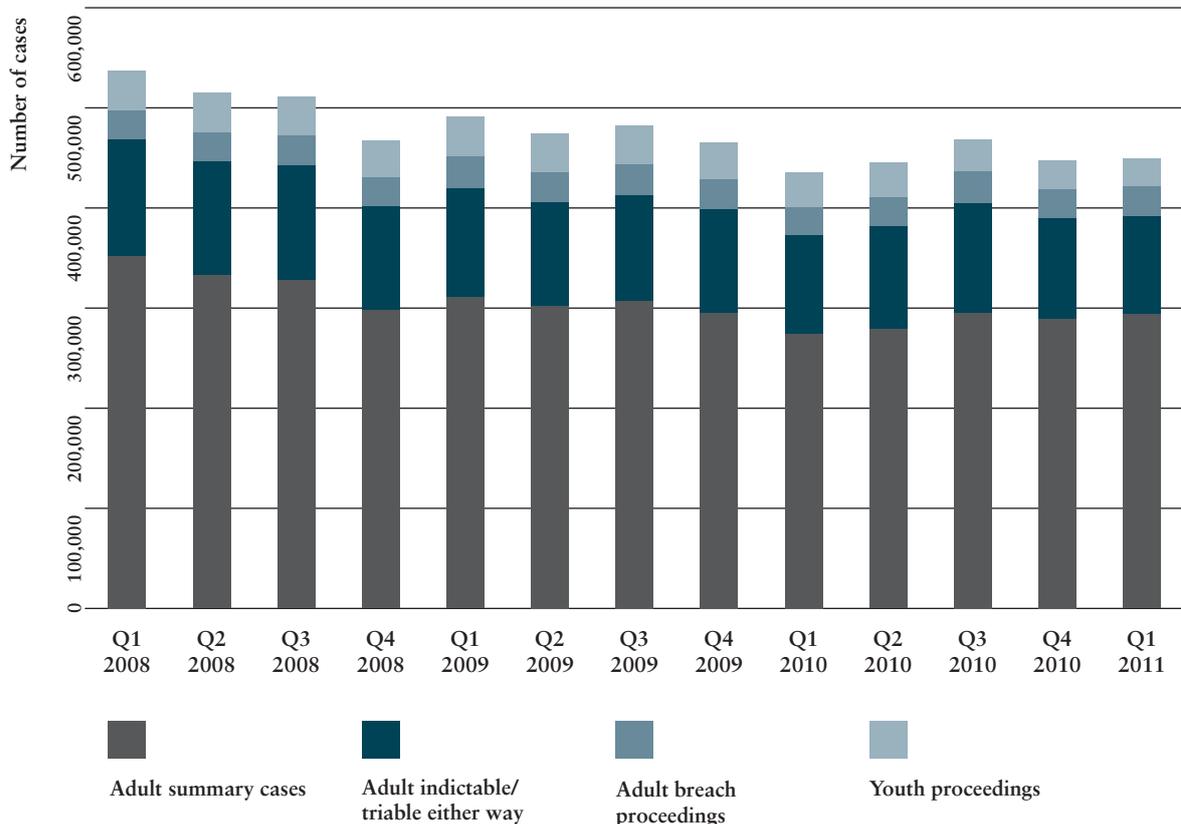
- There was evidence that the resources allocated to case progression were being reduced. At one magistrates' court two full time case progression officers had been reduced to one part-time post. In the same area court staff reported that the case progression CPS lawyers allocated to the Proactive Case Progression Team had been required to prosecute in court rather than prepare cases due to resource constraints. Court staff and members of the judiciary also reported that there was insufficient ownership of cases by prosecutors. Court case progression staff reported that it was often difficult to speak to a reviewing lawyer.
- Where joint case progression meetings did take place concerns were expressed that representation was patchy or inadequate. In one area staff from one WCU ceased attending so information was inadequate. The WCUs in that area were going to be amalgamated and there was concern that the WCU would no longer contribute to case progression across the whole county. Court staff also reported that at the existing case progression meetings the CPS was represented by a caseworker not a lawyer, with the consequence that some decisions could not be taken at the meeting.

RECOMMENDATION

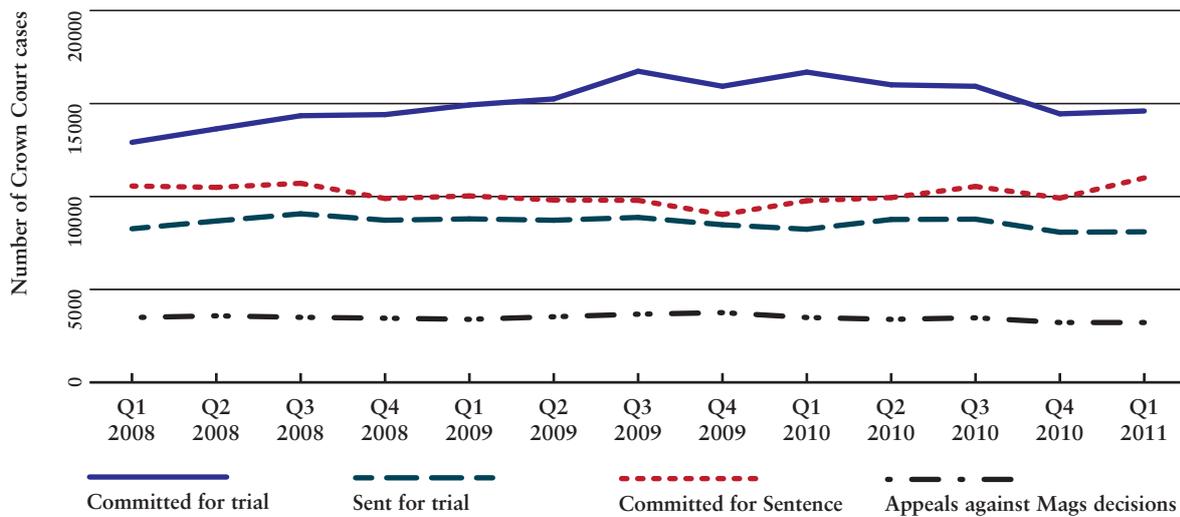
Criminal justice agencies should adopt a joint approach to case progression and performance management based on evidence of what works, and should resource the agreed approach adequately.

Impact of court workload and resources on trial date availability

Magistrates' court criminal workload, Q1 2008 to Q1 2011



Crown Court receipts by case type, Q1 2008 to Q1 2011



Source: Ministry of Justice *Court statistics quarterly January to March 2011*.

- The graphs above illustrate the trends in workload in the criminal courts, with a general reduction in the magistrates’ and youth court since 2008 and a reduction in Crown Court work apart from committals for sentence from the magistrates’ courts from the first quarter of 2010. Many interviewees commented on the impact of the significant reduction in youth court business and increase in Crown Court receipts in particular. Many youth bench chairs commented that their youth court sittings had declined considerably, and, for example, the Hull Youth Courts confirmed that it had only 15 outstanding youth court trials at the time of our visit. Youth trials are more likely to involve young victims and witnesses. The reduction in workload means that in some court centres a youth trial could be listed virtually straight away. This brings its own issues, because listing a case very promptly can mean that there is insufficient time for essential steps, such as the serving of evidence or providing time for the defence to comment on a special measures application.
- More generally magistrates’ courts reported that they could list a one day adult case between four and ten weeks ahead with an average of eight, but that earlier dates could be offered if there was a young witness.
- Crown Court trial listing times were much more variable. At two Crown Court centres we were told that a simple trial could be listed between four and eight weeks after the PCMH. However at another centre we were advised in early March 2011 that a fixed trial date could not be offered until October 2011. This was ascribed to the fact that allocated judicial sitting days had been reduced significantly since January 2011.
- HMCTS has sophisticated models for the allocation of judicial and staff resources, which take into account multiple factors. Case receipts are decreasing and the number of outstanding trials in the Crown Court has been reduced. There is considerable variation across England and Wales in factors such as the guilty plea rate, the average amount of time that each courtroom is used and the rate at which cases are disposed. Although judicial resources have been reduced that does not automatically mean that outstanding trials will increase or that the time taken to list a trial will increase. However it will be important for HMCTS to keep these decisions under review.

Minimising witness waiting times and providing certainty of the trial date

- Listing trials is a complex process that seeks to balance often competing interests in the interests of justice and efficiency. It is not possible to be prescriptive or to draft guidance that could cover every eventuality, nor do we argue that decisions should be made only in the interests of one set of court users. In this inspection inspectors are focussed on the outcomes sought and experienced by young witnesses. From that perspective the priorities of young witnesses we spoke to were for:
 - there to be certainty about the trial date;
 - the trial to be heard promptly; and
 - there to be a minimal waiting time on the day.
- The following practices limit the achievement of these priorities. In raising them we invite those making decisions to continually remind themselves of the impact of their decisions.

Fixed trial dates

The Practice Direction (see above) sets out the type of cases which may be more likely to be given a fixed trial date. These include all serious cases and those that involve vulnerable witnesses or witnesses under 16. The guidance stresses that it is for local judicial practice to decide which cases are given fixed dates. However many interviewees stated that cases involving young witnesses would not necessarily be given a fixed date unless they also involved more serious offences.

Over-listing cases

This refers to the practice of listing more than one trial in the same courtroom at the same time, taking a managed risk that at least one case will crack, be vacated or be ineffective on the day. There is a high volume of cases in many areas, coupled with a high cracked and ineffective trial rate. If only one trial was listed in each courtroom at any one time and that trial did not go ahead as planned then the court resources would be wasted whilst at the same time the waiting times for cases to be listed would lengthen. The successful management of the risk depends on the court receiving good information about the prospects of each case being effective. Inevitably sometimes even with the best information more than one case will be effective and one trial will either start late on the date listed, or will need to be adjourned to a different date.

In many courts cases are double listed - i.e. two trials are listed at the same time, but in some courts more cases would be listed. Magistrates at one court described a recent trial court where four trials had been listed concurrently, some involving young witnesses and the bench had had to decide which cases to adjourn. A common phrase used by interviewees was that although cases involving young witnesses were a priority, they were not a 'priority priority', i.e. cases involving defendants in custody or more serious offences would receive higher priority. Over-listing also impacts on prosecutors who have to prepare several cases in a limited amount of time knowing not all will go ahead as effective trials. With shrinking resources this must be taken into account. Trials with young witnesses often have ABE DVDs which need to be viewed, which can be time consuming, or it is vital that the advocate is fully prepared. Even if an over-listed trial is heard on the allocated day the prosecutor will struggle to give the young witnesses the attention they deserve because the prosecutor is juggling so many other cases.

The listing of other types of non-trial court hearings in trial courts

These include preliminary and case management hearings, bail applications, sentencing hearings and other hearings. This important business needs to be fitted in to the court lists. However, the Practice Direction is very firm in stating that “On no account... should short hearings be listed or fixed that may delay the start or continuation of a trial in the Crown Court.”²¹ Again in practice this is a balancing exercise. We were told by many interviewees that very often the parties are not ready to commence the trial at the appointed time, because the advocates were taking instructions, were involved in other cases or were in discussions about aspects of the case or a possible change of plea. The court needs to get through all its business and not have courtrooms or judicial resources being under-used; however it also needs to be able to start the trial promptly when it is ready, so as not to cause unnecessary waiting for young witnesses.

In one area inspectors were told that up to ten hours estimated work could be scheduled in an adult trial court which would actually sit for around five to six hours. In another area cases involving young witnesses were described as Class 1 (the highest priority) in the area listing policy. Even for these cases the policy allowed for up to three hours other work to be listed in the same trial court, including other trials. Coupled with a late start this could mean that a one day trial could be adjourned for lack of court time, or be part heard with some witnesses needing to come back at a later date. At any rate it is clear that compliance with the rigorous expectations of the priority to be given to trials in the Practice Direction is patchy at best.

- The consequences for too many young victims and witnesses are unhelpful waiting around on the day, or worse still, waiting followed by the need to return on a different occasion.

Case study: Inspectors observed a case in the magistrates’ court involving five young witnesses listed to commence at 10.00 a.m. The case was double listed with a trial involving a defendant in custody which was heard first. The custody trial cracked, but dealing with that case created a delay in commencing the trial involving the young witnesses. The delay was exacerbated by the fact that applications for special measures had not been handled effectively by the prosecution, and therefore had to be determined on the day. The five young witnesses and their families had arrived at 9.30 a.m. but it was 1.00 p.m. before the trial commenced and the first witness was heard.

21 Section 5.4 (f).

Chapter 6: The experience of young victims and witnesses at court

6.1 *Arrival at court*

- The arrival at court of a young witness can set the tone for their overall experience. Because a significant minority of young witnesses do not have a pre-trial visit, arrival at the courthouse on the day of the trial might be the first time that they have been inside a courthouse. Most courthouses have some provision for vulnerable or intimidated witnesses to enter the courthouse via a separate entrance. Some secure entrances still led into public waiting areas, one secure entrance was immediately adjacent to the main court entrance and offered little additional benefit and young people were not always made aware there was a separate entrance. Defence witnesses were rarely known about by the court or Witness Service before the day and so would not be informed of the availability of a secure entrance. Many young witnesses therefore entered the courthouse via the main entrance along with often large volumes of other court users and needed to rely on clear signage or directions from court or Witness Service staff.
- In many courthouses court ushers, security staff and Witness Service staff worked together well to quickly identify young witnesses and escort them to a safe area. However inspectors found that reception arrangements did not always ensure that this happened. Young witnesses and their supporters often needed to be proactive themselves to find information, particularly where they had not had a pre-trial visit.

Case study: Inspectors found two defence witnesses in a secure waiting room used for prosecution witnesses who had been shown there by a security officer. The security officer said that there used to be an usher to greet and direct witnesses but this changed around five months previously. He stated that security staff are not paid to direct witnesses and when the defence witnesses identified themselves as witnesses he assumed they were for the prosecution. He said it is the first time this has happened. Defence witnesses should not be prevented from waiting in a secure area, but if inspectors had not been present the prosecution witnesses in the same case could have been shown into the same room.

6.2 *Management of cases on the day*

- Most issues which arise on the trial date are linked to court listing decisions, case progression and prior support to the young witness and their parents all of which are outlined in earlier chapters. The most significant issues were as follows:
- *Waiting times* - Chapter 5 above set out some of the causes of long waiting times on the day for young witnesses. HMCTS has the following performance targets for witness waiting times:

Crown Court

- Witnesses called within 2 hours - national target 60 per cent.
- Average waiting time - national target 2 hours and 30 minutes.

Magistrates' courts

- Witnesses called within 1 hour - national target 60 per cent.
- Witnesses called within 2 hours - national target 80 per cent.
- Average waiting time - national target 1 hour and 30 minutes.

Performance is measured through twice yearly surveys, which do not make a distinction between adult and young witnesses. Performance for England and Wales in the most recent survey, undertaken in November 2010 was as follows:

	Average waiting time		% who gave evidence within 2 hours		% who gave evidence within 1 hour	
	Performance	Target	Performance	Target	Performance	Target
Crown Court	2:07	2:30	56.5%	60%	NA	No target
Magistrates' courts	1:24	1:30	79.9%	80%	50%	60%

Source: HMCTS Witness monitoring survey - November 2010 summary report.

- There were some regional variations to these results. Overall performance was broadly in line with the results from the same survey from November 2009.
- Our survey of young witnesses found that waiting times varied from an average of two hours eight minutes in one area to four hours and nine minutes in another. The overall average waiting time of the 50 young witnesses seen in the five areas was three hours fourteen minutes. There were some very long waiting times observed but also some cases which started promptly and witnesses had short times to wait. Although all those that we spoke to were aware of the need to keep waiting times to a minimum, the impact of long waiting times on young witnesses can tend to be forgotten in the midst of so many other issues to attend to. Inspectors observed young witnesses arrive in the morning geared up to give their evidence. Those who were still waiting in the mid afternoon were tired and bored and perhaps less likely to give their best evidence. One way to manage waiting times is for so called 'batting orders' - the staggered scheduling of witnesses to minimise the wait - to be produced in advance. This was more common for Crown Court trials which can tend to be longer. At one magistrates' court inspectors were told that even for a two day trial all witnesses would be called for 09.30 a.m. on the first day.

Case study: A YWS volunteer told inspectors that he had been involved in supporting a nine year old witness at court. The young witness arrived at court at 9.00 a.m. His mother was also a witness and gave her evidence in the morning so she was not allowed to speak to him thereafter. He waited until 4.00 p.m. to be called to give his evidence, by which time he had fallen asleep and the magistrates asked for him to be woken up. He completed his evidence at 6.00 p.m.

GOOD PRACTICE

At Birmingham Crown Court it was agreed that the court clerk would remind the judge when a young witness had been waiting for between 60 and 90 minutes. The Witness Service sends a message to the clerk in court by using the Xhibit instant messaging system. The judge can then take a view about how soon the witness is likely to be required, and release the witness if appropriate.

GOOD PRACTICE

At Hull Crown Court if a young witness lives within an hour or so's travelling distance from the court they are allowed to wait at home, and travel in when the court is actually ready to hear their evidence. The Resident Judge is on record as saying that the court will wait for the witness rather than the other way around.

- Because waiting times can be lengthy and the court process is unfamiliar, young witnesses and their parents wanted to be kept updated about what was happening with their case. Responsibility for providing information is shared between the prosecution and defence advocates, the Witness Service and court staff. For prosecution witnesses this process starts with the 'Prosecutors' Pledge' commitment for the prosecutor to meet the witness before the case starts. This usually happens before the courts start sitting. Most witnesses we spoke to had met the prosecutor, who had explained what was going to happen and given the opportunity for any final questions to be asked.
- During the rest of the day the main source of information for witnesses was from the Witness Service or Young Witness Service. Staff and volunteers frequently told inspectors that court staff and CPS staff were not proactive in providing updates. CPS staff often had more than one case to present and largely needed to be in court. They found it difficult to be able to give witnesses information, and often needed to give partial information for legal reasons. Court ushers could not always provide the level of service that witnesses may require. This was because of the range of their duties and the fact that they increasingly had to cover more than one courtroom as posts had been lost. Court staff were strongly supportive of the Witness Service: if the Witness Service was cut they would find it extremely difficult to offer anything more than basic support to witnesses. Xhibit screens in the Crown Court were sometimes found in main witness waiting areas and provided some level of information, but were sometimes seen as counter-productive. The system is usually updated in real time from the courtroom. However witnesses could wait lengthy periods for the prosecutor or case worker to come to see them to confirm and explain what was happening. At one court witness feedback strongly indicated that the Xhibit screen was a source of frustration and they wanted it to be removed. They were unhappy that it continuously displayed the name of the defendant and that there was a delay between seeing a change on the screen and being updated by the prosecutor. Witness Service staff often said that they needed to be proactive in obtaining information as court and CPS staff were too busy or did not want to contact the witness if there was no new information.

- Supporting part-heard witnesses or young people whose parents were also a witness is also problematic. Inspectors observed several occasions where a young witness had not completed their evidence before a lunch break or when the court adjourned for the day. This situation creates a difficulty because the witness is not allowed to discuss the case or their evidence, particularly with another witness. Witness Service staff said that they would do what they could to supervise a young person who could not speak to their parent. This could include going out of the courthouse to buy lunch, or remaining with the witness in the waiting room. Sometimes the witness and their parent did spend the lunch break together, after receiving a strong warning not to discuss the case. One Witness Service volunteer said that she sometimes advised witnesses to leave the court in different directions and to meet up somewhere out of sight, but to be mindful that they could be observed by another party to the case. Inevitably those who are familiar with the system try to give pragmatic advice about common issues. There were several subjects where such advice given by Witness Service volunteers in a spirit of helpfulness was incorrect or too dogmatic and Witness Service managers should ensure that their staff offer options and explain the consequences of decisions.

6.3 *Security, safety and facilities*

- Inspectors found, in general, better searching and general security arrangement in courthouses than in the 2009 inspection. However several courthouses had not designated a separate secure evacuation point for vulnerable witnesses in the event of a building evacuation. In other court centres court staff reported that there was such a secure evacuation point but Witness Service staff were not aware of its location. These examples suggest that security risk assessment processes are not yet fully comprehensive, although almost all young witnesses surveyed said that they had felt safe in the courthouse.
- The facilities for young witnesses varied considerably. It was clear that HMCTS staff had collaborated with the Witness Service to make as much space available as possible given the constraints of the court estate, but only at Birmingham Crown Court were facilities very good. The majority of courthouses had limitations on both the waiting areas and the video link rooms in terms of their size, location and facilities, décor, privacy, soundproofing and security. Many TV link rooms were not soundproofed, running the risk that evidence could be overheard by other witnesses.

Case study: At one large courthouse the TV link room was in the basement and reached through a lengthy route through a document storage area. The room had no external windows and felt gloomy. Despite efforts to cheer the room up with a mural the whole experience of getting to and using the room was off putting.

At another courthouse one witness waiting room was small and poorly soundproofed and was located next to an interview room used by defendants and their solicitors.

- Some of the poorest facilities were at the Birmingham Youth Court building where the waiting rooms were small, insecure and unwelcoming. In a positive development the Court Manager had made a successful bid for £25,000 funding from the Criminal Justice Board to be spent on redecorating young witness rooms and opening up an unused area to serve as a new main witness waiting area.

6.4 *Appeal cases*

- Several interviewees raised the issue of the impact on young victims and witnesses of cases being appealed from the magistrates' or youth court to the Crown Court. Appeals to the Crown Court are very straightforward,²² no grounds are required and there is no requirement to seek leave to appeal. With the encouragement of the senior judiciary there has been an attempt to recognise the benefits to young defendants of even serious offences, such as rape, being heard in the youth court. The youth court is seen to be less intimidating and magistrates are used to dealing with the particular needs of young people. For that reason many district judges (magistrates' courts) have been trained (or 'ticketed') to hear serious cases in the youth court.
- Whilst this does have advantages for young defendants it also increases the risk that young witnesses in serious cases will need to undergo a difficult ordeal twice. As the appeal process is so straightforward the only risk that the defendant needs to weigh up is the possibility of receiving an increased sentence if the appeal is not successful.
- There were indications that the support processes set out in this report may not be as smooth for appeal cases as for first trials.

Case study: A youth defendant appealed to the Crown Court against a conviction in the youth court for rape. The CPS Trials Unit Head described having to expend a great deal of effort in persuading the Crown Court to allow the young witnesses to give evidence remotely from the video suite at the original trial venue as this would be less stressful for them.

The CPS reported that parents of the witnesses were extremely reluctant to allow them go through the ordeal of giving evidence again. In the parents' view the approach of the defence in the magistrates' court had been oppressive. The witness care unit officer and the OIC had to persuade the families that their children would not be so aggressively cross examined in the Crown Court.

The case was cited as a positive example of the support that could be provided in difficult circumstances. The Witness Service informed inspectors that at extremely short notice they were asked to support the witnesses using the same volunteer as had supported in the youth court. Fortunately the original volunteer had been available at short notice but the standard system for notifying Witness Support of the hearing and the witness's needs had not been applied in this appeal case.

22 Under s.108 of the Magistrates' Courts Act 1980.

Chapter 7: The value of the Young Witness Service

- Being a victim of or witness to crime will rarely be a positive experience. Throughout this report we focus on the factors that promote the best experience for young people. Witnesses and staff from statutory agencies spoke very highly of the support provided by the standard Witness Service. Inspectors witnessed this support firsthand at pre-trial visits and on the day of trial.
- We take this opportunity to comment on the additional value provided by the Young Witness Service (YWS), which we observed in two different forms in Nottinghamshire and Humberside. A YWS operates in only a small number of areas in England and Wales and the services are run on different models. For example:
 - The Nottinghamshire model is based on the recruitment of specific volunteers to support young victims and witnesses. The volunteers are trained and co-ordinated by the Nottinghamshire Victim Support service, which also manages the standard Witness Service. Volunteers came from a variety of backgrounds, including students from the local higher education sector.
 - The Humberside model is based on support worker's time being released from agencies that work in the field of safeguarding children. The service is run by the Hull Safeguarding Children Board (SCB) on behalf of the SCBs covering Hull, the East Riding of Yorkshire and North Lincolnshire. Support workers originate from the agencies who are constituent members of the Local SCBs. North East Lincolnshire has recently withdrawn from this YWS but has set up its own service.
- The benefits of the YWS are two-fold; firstly an enhanced level of contact with the young witness before the trial, usually at the witness's home, and secondly the witness supporters have additional training or professional qualifications in working with young people. The combination of these benefits enables a relationship of trust and understanding to be established between the witness and supporter before the trial. The provision of home visits enables the full use of the materials in the Young Witness Information Pack; for example guided reading or a demonstration with explanations of the 'pop-up court'. The courts deal with many victims and witnesses under the age of ten, often in connection with serious offences. Such children require support and information provision which is sensitively handled, and the YWS staff have the time and skills to do so.
- An academic study²³ of Young Victim and Witness schemes identified and quantified their benefits to witnesses and to the justice system. Staff and members of the judiciary were very supportive of the benefits of the YWS, including for example the strength of advocacy for the needs of young witnesses in Hull.
- There can be some issues with the delivery of the service, for example:
 - There were sometimes tensions in the relationship between the dedicated Young Witness Service and the general Witness Service. Both services could be involved in supporting witnesses in the same case and interviewees mentioned occasions when information had been covered twice because the Witness Service did not appreciate what the Young Witness Service covered.

23 *Evaluation of young witness support: examining the impact on witnesses and the criminal justice system* Joyce Plotnikoff and Richard Woolfson Lexicon Limited.

- In one scheme the type of support provided was dependent on the wishes of the Young Witness Service supporter, for example some did not wish to undertake home visits, reducing some benefits of the service for those witnesses.
- In one scheme at the Crown Court neither the Witness Service nor the Young Witness Service staff believed that were allowed to accompany the witness into the TV link room. The Young Witness Service volunteers had been told that this was because they could taint the evidence by having had prior contact with the young person, and they would also be precluded from supporting the young person if there was a re-trial. Witness Service and Young Witness Service witness supporters do accompany young witnesses at many other court centres. Building a good relationship so that the young person can feel supported by someone they know when giving their evidence is a core part of a service for young witnesses. When inspectors met the Resident Judge he made it clear that there was scope for appropriate supporters to accompany the young witness in the TV link room and it seemed that this important issue had not previously been addressed.
- Nevertheless it was clear that the paid staff and volunteers from the YWS who supported young people were very skilled and committed to the role. They stressed the amount of time that they were able to devote to talking to young witnesses in preparation for the trial and the impact that they could have on witness confidence. The Nottinghamshire YWS reported that they had supported several thousand young people and only a handful had subsequently failed to attend the trial. The Humberside YWS had quantified the cost per witness supported as £100, which offers good value for money when set against the peace of mind provided to young witnesses and the benefits to the criminal justice system.
- One YWS volunteer told inspectors “No young person should be fearful or not have adequate information; lots of fears are deal-able with by provision of information. Therefore the YWS is essential not a luxury”.
- Difficult choices are required about which services to fund due to current restrictions on public spending. No doubt one way to approach that might be to focus victim and witness support on those with the greatest needs or vulnerability. This inspection was undertaken in order to provide information on how the needs of young people as a vulnerable group are currently met by the criminal justice system. Many interviewees from the statutory agencies made the point that if the Witness Service in general, and the Young Witness Service, were not able to function they would not have the resources to fill the gaps created and young victims’ and witnesses’ needs would not be met. If so that would leave questions about whether children were being adequately safeguarded.

Chapter 8: Conclusion

The following case study highlights many of the shortcomings that occur in the way cases are handled in criminal justice system and the devastating effect that these shortcomings can have on the young people involved. The case demonstrates only too well the impact of many of the findings of this inspection, but in particular the effect of the following:

- Delays in the investigation.
- The absence of early investigative advice sought from the CPS to plan the ABE interviews.
- The impact of very long ABE interviews.
- Absence of consideration of the use of an intermediary.
- Delays in obtaining an effective trial date and in particular the devastating impact of a lengthy adjournment on the case.
- The impact that delays and a vacated trial date can have on the continuity of support, in this case from the Young Witness Service.
- Absence of consideration of an application to avoid the victim sitting through the complete interview DVDs at trial, when the stress of watching them had been observed by the officer in the case prior to the first vacated trial date.

Case study: A serious sexual abuse case involved a young victim and a defendant who was a family member.

There was a delay of seven months in seeking CPS advice. Early investigative advice was given but only after extensive ABE interviews had been carried out, losing the opportunity to jointly plan them. The young victim was suffering from behavioural problems at the outset of the case and was going to be challenging to support. No consideration seems to have been given to the use of an intermediary to assess the victim and to report on how best to handle communication before the interview or indeed later for the trial. It took a further four months to charge the defendant and reach a trial fixing hearing at the Crown Court. The trial was fixed for four and a half months later. On the last working day before the trial date it was acknowledged that another trial had overrun and there was no available judge to hear the case. The trial was relisted for a further three months later. The young victim had viewed the five ABE video interviews to refresh his memory before the first vacated trial date, and it had been harrowing and distressing. The Young Witness Service supported the victim and family, but when the trial was vacated the volunteer could not continue to deal with the case and, although another supporter was appointed, there was a loss of continuity.

The officer in the case put in extensive support and although the victim did not want to attend the re-arranged trial, he ultimately did so. The case did not start until lunchtime on the first day due to other matters in the list. The victim refused to watch the ABE videos again before the trial, and so viewed them during the afternoon of the first day of the trial and reacted badly during the long time it took to view them. No consideration seems to have been made to applying to have them played to the jury in the absence of the victim. After the playing of the DVDs all afternoon, the case was then adjourned for cross examination the following day. The young victim failed to attend at court and leeway was given to allow time to find and bring him to court. This was achieved in the afternoon but the victim felt unable to continue and go into the court. The young victim stated it had taken so long for the case to get to trial that he had moved on with his life and wanted to put it behind him. The case was discontinued.

- The time from reporting the offence to the first court appearance was 16 and a half months.
- The time from the first court appearance to the discontinuance of the case was ten and a half months.

The victim was 14 years old when the offence was reported, and 16 years old when the case was discontinued.

Such fundamental issues must be addressed if the experience of young victims and witnesses in the criminal justice system is to improve.

The system must ensure that:

- The police and WCU improve the early identification of the needs of young victims and witnesses and the right special measures to meet them.
- The police improve the timeliness, availability and quality of the collection of evidence by video recorded interview and ensure that young witnesses can view this in good time before the trial.
- The police increase the use of early consultations or advice from the CPS.
- The police, CPS and courts increase the use of intermediaries in appropriate circumstances at all stages of a case.
- Young witnesses have better access to appropriate information and support including counselling, pre-trial visits to court and specialist witness services.
- Prosecution, defence and the courts reduce delays in trials being heard.

Although this inspection has found some small improvements in the handling of victims and witnesses since the last thematic review in 2009, overall victims and witnesses and particularly those who are young and vulnerable continue to be adversely affected by an absence of real focus on their needs by all agencies in the criminal justice system. Many agency staff may be personally committed, and we have found that they genuinely care about individuals, but the system itself appears to be unable to maintain a consistent and acceptable level of care as cases pass through it.

SECTION 2

Chapter 9: Response to the recommendations of the original review

- Despite clear efforts by all agencies there has been overall limited progress against recommendations and aspects for improvement (AFIs) contained in the previous joint inspection report,²⁴ to improve the treatment of victims and witnesses. We have detailed our views where we have been able to obtain sufficient evidence to comment within the remit of this inspection.
- Clearly the impact of the spending review is being felt across the agencies. The withdrawal of funding for LCJBs and the uncertainty of their future in each area and the disbanding of the Victim and Witness Care Delivery Unit (VWCDU) places greater reliance on local delivery for support for victims and witnesses in line with the Government's localism agenda.

In summary, for the 19 recommendations we reached the following conclusions:

Achieved in full	1
Substantial progress	2
Limited progress	10
No progress	2
No longer applicable due to the changing landscape	3
Outside the scope of this inspection	1

For the 25 AFIs the conclusions were as follows:

Achieved in full	1
Substantial progress	8
Limited progress	11
No progress	1
No longer applicable due to the changing landscape	2
Outside the scope of this inspection	2

²⁴ Report of a joint thematic review of victim and witness experiences in the criminal justice system May 2009.

Definitions are as follows:

Achieved

The CJS has accomplished what was required.

Substantial progress

The CJS has made real headway in taking forward its planned actions in relation to the recommendation or aspect for improvement.

Limited progress

The CJS has made some limited progress in addressing the recommendation or aspect for improvement.

Not progressed

The CJS has not demonstrated progress against the recommendation or aspect for improvement.

No longer applicable

The recommendation or aspect for improvement is no longer applicable.

Insufficient information available to make a judgement

The methodology for this inspection did not allow for the collection of evidence against this recommendation or there have been recent developments which make it difficult to make a judgement.

Progress against recommendations made in the joint review of the experiences of victims and witnesses in 2009

Recommendation	Owner	Joint inspection assessment of progress
<p>1 Chief Constables should examine existing IT systems in order to identify cost effective solutions to provide for routine monitoring of compliance with the requirements of the Victims’ Code of Practice (VCOP).</p> <p>In implementing this recommendation, Chief Constables should also:</p> <ul style="list-style-type: none"> ensure that policies on the recording of details regarding victim contact are standardised and clear; heighten awareness of non-specialist staff regarding the statutory requirements of the Victims’ Code; consider use of different media to maintain contact with victims whilst ensuring policies are in place regarding their use; and ensure that requirements in relation to the completion of witness statement forms (MG11) are communicated clearly to police personnel and that effective completion forms part of routine supervisory processes (paragraph 2.25). 	ACPO	<p>Limited progress</p> <p>There was little progress in monitoring compliance with VCOP. Lancashire has the VICMAN system, which monitors victim contact but in the other areas there was a lack of ability to monitor via IT systems.</p> <p>Force policies on victim contact are clearer, with more supervisory emphasis on monitoring compliance before filing crime reports. In two forces officers entered into “victim contracts” which specified the frequency and mode of contact.</p> <p>This is good practice and assists in identifying which witnesses will require more contact from the outset to target resources appropriately.</p> <p>In the file review, for only 51 out of 106 witnesses was there evidence that an initial needs analysis had been completed, and in only 43 cases had the rear of the MG11 special measures section been properly completed.</p>

Recommendation	Owner	Joint inspection assessment of progress
<p>2 The joint Victim and Witness Care Delivery Unit should ensure that WCUs agree clear protocols with police forces to clarify roles and responsibilities and, in particular, how they interact where victim liaison is shared, to ensure that all victims and witnesses receive the appropriate level of services (paragraph 2.31).</p>	VWCDU	<p>Limited progress</p> <p>National workshops were held for witness care managers to focus on vulnerable and intimidated witnesses and the need to develop local protocols during 2009-10. However, we saw no written protocols dictating how shared victim liaison should operate. Staff spoken to, were happy with informal local arrangements, usually determined on a case by case basis. Only one WCU seen had attempted to formalise the arrangements by holding face-to-face meetings between parties and audit the decisions made. In the four other areas, arrangements were less formal. It was also apparent that where victim liaison responsibility sat partly or wholly outside the WCU, the means of recording and monitoring victim contact was unclear.</p>
<p>3 The Office for Criminal Justice Reform should review the guidance relating to the operation of the Victim Personal Statement (VPS) scheme in light of the introduction of the Victims' Code and re-launch the scheme (paragraph 2.36).</p>	OCJR, VWCDU	<p>Limited progress</p> <p>New guidance and a toolkit was issued in October 2009 and a new leaflet for victims was produced.</p> <p>The Lord Chief Justice has made amendments to the Judicial Practice Direction to make it clear that relatives of a deceased victim of a criminal act can make a VPS and to clarify the language concerning the likely impact that a VPS may have on sentencing.</p> <p>Obtaining and use of Victim Personal Statements is still very mixed. There is a lack of understanding and consistency in the approach by police officers and we found only three in 63 relevant cases available for the lawyer to consider at charging. All front line officers should complete the National Centre for Applied Learning Technologies criminal justice training module to improve upon this.</p> <p>CPS prosecutors and WCUs do not always highlight the lack of a VPS at PCD and post-charge respectively to ensure all relevant offers to make a VPS are made and repeated. Six out of 21 relevant cases in the file sample had a VPS for the sentencing hearing.</p>

Recommendation	Owner	Joint inspection assessment of progress
3		<p>The value of a VPS written in the words of the victim or the victim’s family in fatality cases was emphasised, but some judiciary indicated they are often in the language of the officer taking the statement and are not as impactful.</p> <p>WCUs are often not supplied with a copy of the VPS, which means that the WCO is not provided with important and relevant information about the victim before making contact.</p>
4	<p>CPS areas should ensure that prosecutors are proactive in ensuring relevant victim and witness needs are identified at the charging stage and properly responded to, for instance in the effective use of action plans to obtain further information from the police (paragraph 3.10).</p>	<p>CPS</p> <p>Limited progress</p> <p>The quality of charging decisions and in particular how well prosecutors covered victim and witness issues used to be considered against the No Witness No Justice criteria by self-assessments. The VWCDU was thorough in terms of the evidence sought and how this was measured. After the last inspection self-assessments were requested on an annual basis the last two being in April 2009 and April 2010. There was no national feedback provided in respect of the last self-assessment exercise.</p> <p>The quality of charging decisions is now assessed against the Core Quality Standards. Standards 2 and 3 relate directly to charging. There is still some way to go to achieve substantial improvement. File examination revealed a lack of consideration of victim and witness issues by the charging prosecutor for 43 out of 106 witnesses. Special measures were only addressed for 29 out of 79 relevant witnesses and there was also a lack of action plans. Inspectors found only 29 action plans for 88 witnesses requesting information to meet witness needs from the police.</p> <p>CQS Monitoring has now been conducted by CPS areas since July 2010. It is too early to make judgments on the effectiveness and impact of CQSM. However, HMCPSI will be conducting a specific inspection into this during 2011-12.</p>

Recommendation	Owner	Joint inspection assessment of progress
<p>5 The Office for Criminal Justice Reform should:</p> <ul style="list-style-type: none"> • give consideration to bringing forward legislation to allow oral applications for special measures to suffice where there is an automatic entitlement under statute and when all parties are in agreement, which would be more resource efficient; and • review the existing special measures application form with a view to making it more concise and quicker to complete, while still containing the necessary detail on which to make a decision (paragraph 3.18). 	<p>OCJR</p>	<p>Achieved</p> <p>Changes to the Criminal Procedure Rules 2010 now permit oral applications to be made for special measures and for extension of time to make such applications. In the file sample 51 out of 58 applications made were within prescribed time limits. The application form has been reviewed and implemented.</p> <p>As a result of oral applications being made at first hearings or PCMH there is a noticeable improvement with timeliness of applications. The application form, although amended still attracted some criticism from judiciary and practitioners that it was still too complicated and not user friendly.</p>
<p>6 CPS areas should:</p> <ul style="list-style-type: none"> • continue their work to ensure that Direct Communication with Victims (DCV) cases are accurately identified and letters are sent in a timely manner, undertaking any necessary refresher training; and • ensure that effective systems are in place to monitor the quality of DCV letters and provide appropriate staff training to ensure a consistently high quality (paragraph 3.44). 	<p>CPS</p>	<p>Limited progress</p> <p>The CPS CQS 8 covers Direct Communication with Victims confirming the CPS will explain their decisions to victims when they stop a case or substantially alter the charges.</p> <p>This is measured under the CQSM regime which as stated above is still in its early days.</p> <p>In May 2011 further new measures were introduced with a revised formula to calculate the number of DCV letters that should have been sent to victims replacing the old proxy target.</p> <p>In January 2011 fresh guidance was issued to try to improve the quality of the content of DCV letters with examples of “do’s and don’ts”.</p> <p>Again although steps have been taken the impact of them is not yet clearly ascertainable. In our file sample only one case required a DCV letter to be sent at the charging stage which was not done. A further 23 cases needed a letter to be sent due to a later change in the charge or discontinuance of the case. Of those 23, four were not sent within the requisite time scale and 13 were of satisfactory quality, five were good and four were poor in terms of content and style.</p>

Recommendation	Owner	Joint inspection assessment of progress
<p>7 The joint Victim and Witness Care Delivery Unit should ensure that WCUs comply with the requirement to undertake detailed needs assessments for all witnesses following a not guilty plea and that these are sufficiently comprehensive. Where WCUs are currently unable to provide the required level of service, they should implement a planned approach towards achieving compliance (paragraph 4.7).</p>	<p>VWCDU</p>	<p>Limited progress</p> <p>The monthly performance review measured by the VWCDU rating of areas is no longer produced since the unit was disbanded. With the provision of performance management information now reduced, some areas receive little or no performance data. WCU managers in forces inspected consequently had little concept of the levels of completion of detailed needs assessment. Dip-checking of the quality of detailed needs assessments took place in only two of the five areas inspected.</p> <p>Our file sample revealed that 56 out of 82 witnesses warned to attend court, had a detailed needs assessment carried out. In two areas visited the WCU posted out the assessment forms for completion by the witnesses and or their parents/carers rather than conducting a telephone assessment.</p>
<p>8 The CPS should review the approach to applications for witness summons and warrants and develop guidance for areas, for example, in relation to its domestic violence policy to ensure consistent practice across England and Wales (paragraph 4.23).</p>	<p>CPS</p>	<p>Insufficient information available to make a judgement</p> <p>Guidance was issued in October 2010 regarding the changes to the Criminal Procedure Rules and applications for witness summons, however it was not part of the methodology of this inspection to systematically collect evidence to verify implementation of this recommendation.</p>
<p>9 The joint Victim and Witness Care Delivery Unit should take steps to ensure that WCUs improve the provision of required information to witnesses and its timeliness in order that the relevant requirements of No Witness No Justice and the Victims' Code are met consistently. This should be supported by effective monitoring arrangements (paragraph 4.41).</p>	<p>VWCDU</p>	<p>Limited progress</p> <p>The inspection found timeliness of updates to witnesses to still be an issue, as is the recording of the details of contacts on WMS. We saw very little evidence of monitoring of the relevant requirements of NWNJ or the VCOP.</p> <p>File examination showed that only 25 out of 63 witnesses could be shown to have received the necessary update within the time limit, as required after the first court hearing by a defendant.</p>

Recommendation	Owner	Joint inspection assessment of progress
<p>10 The joint Victim and Witness Care Delivery Unit should ensure that WCU systems to receive information from the police, CPS and HMCS are clearly defined and robust. In support of this, these agencies should ensure that information provided to the WCUs is accurate, timely and supports delivery of WCU obligations (paragraph 4.46).</p>	<p>VWCDU, OCJR, HMCS</p>	<p>Not progressed</p> <p>This is subject to a recommendation in this report. Often information transferred to the WCU was incomplete or not timely. Staff created additional secondary systems to obtain complete and timely information, or the information was not received at all.</p>
<p>11 CPS areas, in close liaison with criminal justice partners, should ensure that effective case management arrangements, which address the needs of victims and witnesses, are in place (paragraph 4.70).</p>	<p>CPS, OCJR, HMCS</p>	<p>Not progressed</p> <p>Case management and progression arrangements vary widely in effectiveness. There was evidence that individual agencies were changing their approach to case progression unilaterally to suit their own requirements, rather than jointly establishing what was effective. This is subject to a recommendation in this report.</p>
<p>12 The joint Victim and Witness Care Delivery Unit should ensure that:</p> <ul style="list-style-type: none"> • WCUs review their current WCU officer training, consider the individual skills of each officer, and introduce training to ensure they are equipped to deal satisfactorily with all aspects of their role; • skills development provided by WCUs includes appropriate risk management training; and • tailored welfare support for all WCU officers is readily accessible, and confidential. Both police and CPS should ensure that WCU staff are aware of the counselling services available to support them in their role (paragraph 4.79). 	<p>VWCDU</p>	<p>Limited progress</p> <p>Training was variable across WCUs inspected. One area provided staff with a professional qualification that had motivated them to raise their level of customer service. Other areas had no formal training whatsoever and relied entirely upon learning on the job. No area had in place any training on risk management. WCU staff were able to access welfare support if required.</p>

Recommendation	Owner	Joint inspection assessment of progress
<p>13 HMCS should ensure that:</p> <ul style="list-style-type: none"> • facilities are being properly risk assessed by ensuring that relevant staff have the ability and training to carry out that function; and • appropriate arrangements are in place with criminal justice partners to ensure risk assessments are undertaken in cases where there is a risk of violence and relevant action is taken (paragraph 5.62). 	HMCS	<p>Substantial progress</p> <p>General security in court buildings was observed to have improved since the last inspection, with entry searches being consistently thorough. HMCTS has improved generic risk assessments but inspectors did not seek detailed information on the local implementation of this recommendation.</p>
<p>14 The joint Victim and Witness Care Delivery Unit should ensure that WCUs use the witness management system (WMS) fully and those not using WMS are able to generate equivalent data to enable the effective monitoring and management of performance both within their area and nationally (paragraph 6.21).</p>	VWCDU	<p>Substantial progress</p> <p>WMS was being utilised in all areas inspected. Staff reported that technical disruption to the service, which was frequent in the early stages of roll out, was now rare.</p>
<p>15 Local Criminal Justice Boards (LCJBs) should take ownership for victim and witness issues and ensure a joint area strategy and improvement plans are developed and communicated effectively. These need to be supported by effective governance and performance management arrangements (paragraph 6.23).</p>	OCJR	<p>No longer applicable</p> <p>Not possible to follow-up this recommendation because the landscape for the governance of joint working has changed since the inspection.</p> <p>Not all areas will retain an LCJB. It remains important for agencies at a local level to effectively work together to improve the experience of victims and witnesses.</p>
<p>16 The joint Victim and Witness Care Delivery Unit should assure itself that No Witness No Justice (NWNJ) resourcing levels are such that they enable areas to meet the requirements of them. As part of this it should undertake process mapping of WCU functions and provide guidance on resourcing levels and delivery models (paragraph 7.22).</p>	VWCDU	<p>Limited progress</p> <p>Managers in WCUs currently believed they had sufficient resources to undertake the work required, but acknowledged that centralisation and consolidation of the WCUs, evident in some of the areas visited, presented both opportunity and challenge for the future. In the three years preceding the inspection, the numbers of police WCU staff in England and Wales had remained fairly static with a 2.0% reduction from 1,247 to 1,222, whilst the CPS staff had reduced by 22% from 297 to 231.</p> <p>The detailed mapping exercise has reportedly been completed but at the time of the inspection had not been distributed to criminal justice areas.</p>

Recommendation	Owner	Joint inspection assessment of progress
<p>17 The Office for Criminal Justice Reform, in close liaison with ACPO, CPS and HMCS, should review and rationalise the array of commitments for victims and witnesses to assist communication with both:</p> <ul style="list-style-type: none"> • staff responsible for victims and witnesses to ensure they are clear as to the commitments and standards they are expected to deliver, and • victims and witnesses in order that they can readily establish the standards of service that they can expect to receive (paragraph 7.29). 	<p>OCJR, ACPO, CPS, HMCS</p>	<p>Limited progress</p> <p>The MoJ has recently announced that it will fund the 2011-12 run of production of Young Witness Packs. This followed an earlier decision to provide only web-based materials in order to reduce running costs. After April 2012 this will then pass to ACPO and CPS to fund.</p> <p>The centrally produced generic Witness in Court and Victim of Crime leaflets are no longer going to be centrally printed. It is to be generated into a letter format for sending out to victims and witnesses.</p> <p>There was no evidence on the inspection that there had been any rationalisation or standardisation of procedures for the staff in WCUs. Indeed, the practices adopted varied significantly.</p> <p>The CPS has commissioned a Victims and Witnesses project review into the various different commitments that are given to witnesses. This is to look at the possibility of streamlining the various documents into one comprehensive victim and witness facing document. Clearly some changes will require legislation and this links to work being undertaken by the MOJ in relation to reconsidering the VCOP. It also will take account of the Victims Commissioner’s view that there are a section of victims and witnesses who need a more detailed level of service than others. The reviews are expected to report towards the end of 2011/beginning of 2012.</p> <p>CQS 7 and additional parts of other standards now cover the level of service that victims and witnesses can expect to receive from the CPS. This is measured under CQSM.</p>

Recommendation	Owner	Joint inspection assessment of progress
<p>18 In order to ensure that the data underpinning a PSA target commands confidence, the Office for Criminal Justice Reform should undertake further work to promote the value of the Witness and Victim Experience Survey (WAVES) and consider if any further revision can be made to address the concerns of stakeholders. At the same time it should promote its plans to capture feedback from victims and witnesses not currently covered by WAVES (paragraph 7.55).</p>	OCJR	<p>No longer applicable</p> <p>It is not possible to follow-up this recommendation because the landscape has altered significantly.</p> <p>The present Government has not maintained a PSA approach and the WAVES survey was cancelled as of September 2010. There are plans to develop alternative approaches to collecting data on victims and witnesses. It will be important to do so in order to understand the experiences and of victims and witnesses.</p>
<p>19 The Office for Criminal Justice Reform and joint Victim and Witness Care Delivery Unit should strengthen the area victim and witness self-assessment process to enable a clearer picture of progress against the Government’s strategy and plans for victims and witnesses. This would also provide a firmer basis on which to challenge criminal justice areas where progress is not being made and to identify and promote good practice. Given the statutory nature of the Victims’ Code, compliance performance should be published (paragraph 7.62).</p>	OCJR, VWCDU	<p>No longer applicable</p> <p>The joint Victim and Witness Care Delivery Unit has been abolished and the self-assessment process discontinued.</p>

Aspect for improvement	Owner	Joint inspection assessment of progress
<p>1 Police forces should ensure that front line officers can identify vulnerable and intimidated victims, as required by the Victims' Code, and witnesses and understand the various special measures and how they work in practice (paragraph 2.12).</p>	<p>OCJR, ACPO</p>	<p>Limited progress</p> <p>ACPO has distributed a pocketbook guide and the new version of <i>Vulnerable and intimidated witnesses a police service guide</i> was published and distributed in March 2011. Most officers spoken to had not yet received the pocket guide.</p> <p>An e-learning tool developed by OCJR has been distributed to all forces, although the inspection revealed that no officers had undertaken this training or any other training specifically about victim and witness care.</p> <p>Knowledge of the legal definitions of vulnerable and intimidated witnesses amongst police officers interviewed in the inspection was generally quite poor but despite this, 82 witnesses out of 106, in our file sample, had been identified by the officer as vulnerable and or intimidated.</p>
<p>2 The Manual of Guidance Board, in liaison with ACPO, should develop guidance to clarify police responsibilities for completing the special measures form (MG2) and to give clear instructions as to when it should be completed and submitted to the CPS, in order to assist the early identification of where special measures are required (paragraph 2.14).</p>	<p>ACPO, VWCDU, OCJR</p>	<p>Limited progress</p> <p>The <i>Vulnerable and intimidated witnesses a police service guide</i> of March 2011 contains reference to the completion of MG2 forms but does not give guidance on their completion. We saw that some forces had issued their own guidance to officers as to when the form should be completed, but saw no evidence of a national version.</p> <p>Completion of MG2s is still an issue and is not being done in every relevant case, even where vulnerable and or intimidated witnesses are identified. There was evidence that the police had submitted only 42 out of 89 MG2s required in the files examined.</p>
<p>3 Police forces should revisit the Victim Personal Statement scheme to heighten the awareness of staff and emphasise the benefits of this scheme for victims. They should also ensure clear guidance is in place regarding the format, content, detail and timing of Victim Personal Statements (paragraph 2.36).</p>	<p>ACPO, OCJR</p>	<p>Limited progress</p> <p>Most operational police officers had knowledge and recent experience of completing Victim Personal Statements. However, only six of the 64 victims in the file sample had a Victim Personal Statement on the police file.</p>

Aspect for improvement	Owner	Joint inspection assessment of progress
4 Police forces should ensure a support/contact services directory is in place and that its availability is made known to all staff, to ensure equality of treatment for all victims and witnesses (paragraph 2.39).	ACPO	<p>Limited progress</p> <p>The inspection showed that although most WCUs had developed their own directories, dissemination of their existence and content to other staff and police officers was not evident.</p>
5 Police forces should ensure police personnel are aware of the services provided by Victim Support and how they fit with service offered by the other support organisations (paragraph 2.44).	ACPO, OCJR	<p>Limited progress</p> <p>We found that police officers still had limited knowledge on the range of services for victims provided by Victim Support. For only 14 of the 63 victims in the files reviewed could evidence be found of referrals to VS.</p>
6 CPS areas should ensure the timeliness standards for dealing with full written advice files are met (paragraph 3.11).	CPS	<p>Limited progress</p> <p>The modernising charging programme has now been rolled out in all areas to address how charging advice is to be given. This includes when written advices are sought in complex cases although no specific time limits are set for the provision of such written advice centrally, it is a matter for areas to fix reasonable target times in agreement with the police locally, although the CPS recommends 21 days.</p> <p>CQS governs the quality of charging decisions including written advices and they will be monitored under the CQSM regime. In the files we reviewed the charging advice was timely in 51 out of 60 relevant cases.</p> <p>The provisions for charging are currently under further review and this includes written advices.</p>
7 The CPS should amend the standard charging form (MG3) to incorporate victim and witness prompt questions to help ensure that full consideration is given to victim and witness issues (paragraph 3.12).	CPS	<p>Substantial progress</p> <p>The standard MG3 form on the case management system (CMS) has a section for victim and witness needs to be addressed by the charging prosecutor. There are local variations of the standard form being used and where the form is adapted as for example the MG3 form used by CPS Direct (CPSD), it seems to act as an aide memoire and prompt to prosecutors to complete the information about victims and witnesses.</p>

Aspect for improvement	Owner	Joint inspection assessment of progress
8 Police forces and CPS areas should work together to ensure that special measures applications are timely and made at the earliest opportunity (paragraph 3.17).	ACPO, CPS, OCJR	<p>Limited progress</p> <p>The recent publication of <i>Vulnerable and intimidated witnesses a police service guide</i>, produced by the MoJ in consultation with ACPO, gives clear direction on the procedures relating to special measures applications. However the inspection revealed that police submission of MG2s was variable, and often has to be chased by the CPS. This impacted on the timeliness of applications.</p> <p>The inspection revealed that for only 43 out of the 89 young witnesses where an MG11 was completed, was the special measures section on the rear of the form completed.</p>
9 The Office for Criminal Justice Reform, CPS and ACPO should agree jointly a clear policy regarding the recording and requesting of early special measures meetings to ensure that the special needs of vulnerable and intimidated victims and witnesses are met (paragraph 3.20).	ACPO, CPS, OCJR	<p>Achieved</p> <p>Following the publication of <i>Vulnerable and intimidated witnesses a police service guide</i> further guidance will be issued to promote recognition of when early special measures meetings should take place.</p>
10 CPS areas should assure themselves that local arrangements are in place to ensure WCUs are made aware of the outcomes of special measures applications promptly (paragraph 3.21).	CPS	<p>Limited progress</p> <p>Paragraphs 3.2 and 4.3 of this report deal with information flows about the outcomes of court hearings. Evidence from this inspection was that the promptness and accuracy of notification to WCUs and therefore witnesses themselves was not consistent. Some witnesses still arrive at court believing that special measures have been granted when they may not have been applied for.</p>
<p>11 CPS areas should:</p> <ul style="list-style-type: none"> • ensure training for agents incorporates DCV responsibilities (and also requirements of prosecutors under the Victims' Code and Prosecutors' Pledge); and • agree with WCUs how responsibilities will be co-ordinated in cases where a DCV letter is required and the WCU also has a responsibility to notify the victim of the outcome of a hearing to ensure the communication does not conflict in any way (paragraph 3.44). 	CPS	<p>Limited progress</p> <p>New guidance regarding the drafting of DCV letters has been issued to prosecutors as stated above. No progress appears to have been made regarding the second limb of this AFI.</p>

Aspect for improvement	Owner	Joint inspection assessment of progress
<p>12 The joint Victim and Witness Care Delivery Unit should ensure that WCUs provide practical assistance to witnesses at a level that best supports them, meets their individual needs and encourages witnesses to attend; and this is provided on a consistent basis (paragraph 4.11).</p>	VWCDU	<p>Limited progress</p> <p>The inspection found that WCUs were committed to providing a good service to victims and witnesses but the service provided was not consistent. The timescales for notifying vulnerable and intimidated victims of progress and results of court cases were rarely achieved, potentially undermining confidence in the whole criminal justice process.</p>
<p>13 The joint Victim and Witness Care Delivery Unit should ensure that:</p> <ul style="list-style-type: none"> • WCU local contact/support services directories are comprehensive, reflecting the needs of witnesses in their area, and kept up to date; and • WCU officers are aware of directories and are readily able to access them (paragraph 4.12). 	VWCDU	<p>Substantial progress</p> <p>The inspection revealed that WCUs had developed unsophisticated local directories to assist them in identifying key contacts. This generally comprised of a paper-based folder in each of the WCUs. These were well used and considered adequate by staff.</p> <p>Women’s Aid has produced a Gold Book, for signposting agencies to supporting services for domestic abuse offences against women. They have provided one copy for each WCU.</p>
<p>14 The joint Victim and Witness Care Unit should ensure that WCUs:</p> <ul style="list-style-type: none"> • offer all witnesses the opportunity of a pre-trial visit including further visits where a trial is delayed severely or the venue changed; and • work with the Witness Service and the courts to accommodate the availability and time constraints of witnesses as far as practicable (paragraph 4.15). 	VWCDU	<p>Substantial progress</p> <p>The joint VWCDU is no longer in existence to ensure compliance with this recommendation. Because of the particular focus of this inspection inspectors did not verify the processes for offering all witnesses a pre-trial visit.</p> <p>From the file sample it was clear that the offer of pre-trial visits was being made to all young witnesses. What was not obvious from the files, CMS and WMS is how many pre-trial visits were taken up by young witnesses. Information was not always noted and pre-trial visits are carried out by the Witness Service but we did not have access to data from them to ascertain exact numbers.</p> <p>From our observed cases at court some young witnesses were not able to attend a pre-trial visit before the day of trial because the courthouse was not open. All witnesses spoken to had the opportunity of court familiarisation on the day of the trial.</p>

Aspect for improvement	Owner	Joint inspection assessment of progress
<p>15 The Office for Criminal Justice Reform, in close liaison with ACPO, CPS, HMCS and Witness Service, should ensure that information provided to victims and witnesses is reviewed and rationalised and clear guidance in this respect issued to front line staff (paragraph 4.28).</p>	<p>OCJR, ACPO, CPS, HMCS</p>	<p>Limited progress</p> <p>The MoJ has recently announced that it will fund the 2011-12 run of production of Young Witness Packs. This followed an earlier decision to provide only web-based materials in order to reduce running costs. After April 2012 this will then pass to ACPO and CPS to fund.</p> <p>The centrally produced generic Witness in Court and Victim of Crime leaflets are no longer going to be centrally printed. It is to be generated into a letter format for sending out to victims and witnesses.</p> <p>There was no evidence on the inspection that there had been any rationalisation or standardisation of procedures for the staff in WCUs and practices varied significantly.</p> <p>A review is underway for all documentation relating to victims and witnesses, including a complete revision of Young Witness Pack.</p>
<p>16 HMCS should give further consideration as to how to continue to promote the Going to court DVD and other relevant courthouse information to defence solicitors to maximise the likelihood of defence witnesses receiving appropriate information in advance of attending court (paragraph 4.29).</p>	<p>HMCS</p>	<p>Substantial progress</p> <p>HMCTS has undertaken a significant amount of creative work to engage with defence advocates to promote Going to court. It is difficult to engage with defence advocates systematically during an inspection and inspectors were unable to verify the outcome of that engagement. Inspectors commend the activity over the last 12 months. It is likely that some degree of specific effort will continue to be required in the future if use of the DVD is to be embedded within the defence community.</p>
<p>17 The joint Victim and Witness Care Delivery Unit should ensure that appropriate monitoring is in place to assure the quality of letters sent to victims and witnesses (paragraph 4.31).</p>	<p>VWCDU</p>	<p>Substantial progress</p> <p>Although the joint Victim and Witness Care Delivery Unit has been disbanded the inspection found that most WCU staff recognised that the letter templates on WMS were only guides and closer attention was being paid to the content of letters before being sent out.</p>

Aspect for improvement	Owner	Joint inspection assessment of progress
<p>18 HMCS needs to better promote and communicate the witness champion and witness liaison officer roles to ensure they contribute to improving witness care as envisaged (paragraph 5.8).</p>	HMCS	<p>Substantial progress</p> <p>HMCTS has undertaken sustained activity to promote and embed the roles of witness champion and witness liaison officer. All of those interviewed demonstrated a practical commitment to supporting witnesses at court and all had good working relationships with colleagues from partner agencies. However there was still a lack of clarity about the corporate expectations of both roles by post holders, and operational differences in the way that they were carried out. Nevertheless there is a good range of written reference materials to provide guidance about both roles.</p>
<p>19 HMCS should ensure that:</p> <ul style="list-style-type: none"> • HMCS areas work closely with other agencies to reduce witness waiting times and meet the standards set out in the Witness Charter; and • witness waiting times are recorded accurately to reflect the time witnesses are asked to attend court (paragraph 5.27). 	HMCS, OJCR	<p>Substantial progress</p> <p>The Witness Charter places the onus on HMCTS to minimise witness waiting times. However court staff and the judiciary cannot exercise full control over waiting times. HMCTS has undertaken a variety of initiatives to maintain the impetus to bear down on witness waiting times and manage cases effectively on the day. These include workshops, newsletters, conferences and attempts to collate good practice. Performance against current targets is reported at paragraph 6.2. Whilst average waiting times were within HMCTS targets the percentage of witnesses being seen within one or two hours did not meet targets and there had been little improvement since the survey 12 months before.</p> <p>HMCTS undertook an exercise to quantify the difference between the times that witnesses were required by the court to attend court and the time that they were asked to attend by their advocate or by others. HMCTS reported that analysis of witness survey data demonstrated that there was on average in fact only about 15 minutes difference between the two times.</p>

Aspect for improvement	Owner	Joint inspection assessment of progress
<p>20 CPS areas should ensure that training for solicitors and barristers instructed to act for the prosecution includes specific training on the Prosecutors' Pledge, and monitoring of all prosecutors' performance includes specific reference to compliance with the Pledge (paragraph 5.35).</p>	CPS	<p>Substantial progress</p> <p>CQS 7 covers this issue and the CPS will monitor prosecutors against this under CQSM which as stated is still in its infancy.</p> <p>The Advocacy Training Council issued a report <i>Raising the Bar; the handling of vulnerable witnesses, victims and defendants in court</i> in April 2011 which contains guidance and good practice particularly for the independent Bar.</p> <p>At the present time the CPS is in the process of setting up a panel of advocates from the private Bar who will then be authorised to conduct cases on behalf of the CPS.</p>
<p>21 HMCS and CPS areas should ensure that:</p> <ul style="list-style-type: none"> • staff who provide support in the courthouse have the knowledge and understanding to respond appropriately to the needs of victims and witnesses with learning difficulties or mental health issues; and • diversity training, particularly for front line court staff, is regularly updated and developed (paragraph 5.58). 	HMCS	<p>Insufficient information available to make a judgement</p> <p>The methodology for this inspection did not include the systematic testing of the impact of this recommendation.</p> <p>HMCTS has provided inspectors with a wide range of reference and training material to provide court staff with knowledge and understanding about learning disabilities and mental health issues. HMCTS has also commissioned research and engaged with appropriate stakeholders to develop its understanding of these issues.</p> <p>There has been a reduction in the numbers of CPS paralegal staff who attend court to cover cases at the Crown Court and those who are present are frequently covering several cases often in different courtrooms. Our observations showed that although CPS staff did initially come to see the witnesses and complied with the VCOP most of the care given to witnesses at court was done by the Witness Service.</p> <p>All paralegal staff complete equality and diversity training as part of their induction and witness care is covered within the training resource pack given to them. They shadow an experienced paralegal assistant and are given a mentor to assist in training but there is no specific training given about dealing with witnesses with learning difficulties or mental health issues.</p>

Aspect for improvement	Owner	Joint inspection assessment of progress
<p>22 HMCS areas should ensure that the diversity of the local area is better reflected in the information available to witnesses in the courthouse (paragraph 5.60).</p>	HMCS	<p>Not progressed</p> <p>The main generic and court specific information for witnesses is contained in the HMCTS Prosecution and Defence Witness leaflets, which are available to download in ten languages. Any other provision is the responsibility of local court managers and is likely to be dependant on the time and the priority that they choose to give to this issue. HMCTS does not have the capability to systematically ensure that the diversity of all local areas is reflected in the information available at all courthouses.</p>
<p>23 HMCS should revisit the recommendation made by HMICA in Valuing Victims and Witnesses (2006) and satisfy itself that initiatives and procedures driven from the centre are in fact being acted upon at front line level (paragraph 5.64).</p>	HMCS	<p>No longer applicable</p> <p>HMCTS has benefited from the dedicated capacity of the Victims, Witnesses and Jurors Branch (VWJB) at the centre. That branch has co-ordinated a wide range of activity to support and verify the implementation of national initiatives. Following a review of HMCTS headquarters and its operating model the VWJB has been disbanded and responsibility for monitoring implementation of policies and initiatives as business as usual will pass to the regional level. It is too soon to evaluate whether this will be effective in giving senior officials the assurance that corporate priorities are being delivered.</p>
<p>24 HMCS areas should ensure that staff are aware of targets and performance for the court as a whole as well as in their own areas of work, to encourage individuals to better understand how their role contributes into the wider picture (paragraph 5.67).</p>	HMCS	<p>Insufficient information available to make a judgement</p> <p>This inspection did not systematically collect evidence to verify implementation of this recommendation. There was some evidence that relevant staff understood and were focussed on, achieving targets for witness waiting times and the recording and transmission of case outcomes to other agencies.</p>
<p>25 LCJBs should review arrangements in their areas for contacting victims and witnesses to ensure they are properly managed and co-ordinated and avoid confusion and possible overload (paragraph 7.33).</p>	OCJR	<p>No longer applicable</p> <p>It is not possible to follow-up this recommendation because the landscape for the governance of joint working has changed since the inspection.</p> <p>Not all areas will retain an LCJB. It remains important for agencies at a local level to effectively work together to improve the experience of victims and witnesses.</p>

ANNEX A - VICTIM AND WITNESS INTERVIEWS: KEY FINDINGS

Are you a prosecution or a defence witness?	Prosecution	49	Defence	1
	Yes	No	NA/ Unrecorded	Total
If you are a prosecution witness, are you also a victim of crime in this case?	21	27	2	50
Have you given evidence in a criminal trial before?	9	41	0	50
<i>If you are both a witness and a victim in this case</i>				
Were you told about the services offered by Victim Support?	18	4	28	50
Were you given an opportunity to make a Victim Personal Statement? (NB need to clarify this is different to the witness statement)	9	11	30	50
If yes, did you take this up and make a statement?	7	2	41	50
	Not very well	Fairly well	Very well	No response
How well have you been kept informed about the progress of this case?	11	16	16	7
How well were any questions you had about this case and your role as a witness dealt with?	3	11	19	17
	Yes	No	NA/ Unrecorded	Total
Were you given the opportunity of a pre-trial visit to the court?	38	11	1	50
If yes, did you take this up?	21	15	14	50
Were you given the opportunity of a home visit by Witness Service to explain the trial process?	9	37	4	50
If yes did you take this up?	6	5	39	50
Were you told about the possibility of special measures, such as a screen or video link, that could help you give evidence at court?	48	0	2	50
If yes, was an application made for special measures?	34	10	6	50
If yes, have any special measures been made available to you?	34	6	10	50
Were you given sufficient information about the courthouse and the proceedings before you came to court today?	37	6	7	50
Were you given the opportunity to view the DVD called Being a witness at court?	21	25	4	50

At the courthouse today				
Did the prosecutor introduce himself to you prior to the trial?	44	4	2	50
Do you think you had a clear understanding of everybody's role in the trial process before you gave evidence?	42	7	1	50
At what time were you asked to attend court?	<i>We recorded these times individually for each witness interviewed to obtain the average waiting time detailed below.</i>			
At what time did you first give evidence?				
Waiting time	<i>This is the average waiting time for all witnesses interviewed in our survey.</i>			3 hours 14 minutes
Have you been able to leave the courthouse during the wait to give evidence?	19	21	10	50
	Not kept informed	Fairly well informed	Very well informed	No response
How well have you been kept informed of what was happening in relation to your case while you were waiting?	4	11	31	4
	Yes	No	NA/ Unrecorded	Total
Were you comfortable while you were waiting?	38	3	9	50
Have the arrangements for refreshments been OK?	45	1	4	50
Have you felt safe?	43	4	3	50
Do you have any special requirements (such as disability, child care, help with travel, smoking, access to prayer facilities)?	4	35	11	50
Were your requirements met?	11	8	31	50
Were you given an expenses form?	35	12	3	50
With an explanation of how to complete it?	19	14	17	50
If you witnessed, or were the victim of crime in future, would you be prepared to attend court to give evidence in the future?	43	5	2	50
Have you been told how to make a complaint if you are not satisfied about anything?	7	37	6	50
Would you know how to make a complaint about your treatment as a witness?	7	25	18	50
Did you have a witness supporter with you when you gave evidence?	11	7	32	50

ANNEX B - FILE EXAMINATION RESULTS

Analysis of police actions						
Identification of vulnerable and/or intimidated status						
Question	Y	N	NA	NK	NR	Total
Is there evidence to show that reasonable steps were taken to identify the victim witness or witness as vulnerable and/or intimidated at the investigation stage?	82	23	0	0	1	106
Needs assessment						
Has an initial needs assessment been completed on the MG11?	51	49	2	3	1	106
	Poor	Sat.	Good	NA	NK	Total
What is the quality of the initial needs assessment?	32	35	26	4	9	106
	Y	N	NA	NK	NR	Total
Has relevant victim and witness information been recorded on the MG3/A by the investigator?	56	49	0	0	1	106
Special measures						
Is there evidence that the provision of special measures has been explained to the victim witness or witness?	49	45	7	4	1	106
Have the views of the victim witness or witness about an application for special measures been recorded?	24	64	12	5	1	106
Was the special measures section on the reverse of the MG11 completed?	43	41	17	4	1	106
Did the investigator note down any special measures requirements on the MG3/A?	19	75	11	0	1	106
Was the MG2 completed in a timely manner?	30	55	20	0	1	106
Special protection						
Was the witness in need of special protection?	12	93	0	0	1	106
If yes, were special protection measures put in place adequately?	3	26	59	0	18	106
Information and support						
Is there evidence that the victim witness has been referred appropriately to Victim Support?	14	50	40	1	1	106
Victim Personal Statement						
Is there evidence that the victim witness or the parents or carers in appropriate cases have been offered the opportunity to make a personal statement?	23	42	39	0	2	106
Was a Victim Personal Statement made?	6	63	35	0	2	106
Updating - investigation						
Prior to disposal of the case is there evidence that the victim witness was notified at least monthly of progress?	35	17	43	0	11	106
Where an investigation into a serious crime is concluded with no person charged has it been recorded whether the victim witness wishes to be advised of any subsequent review procedures?	1	4	86	0	15	106

I	Intimidated	NFA	No further action	Sat.	Satisfactory	W	Witness
N	No	NK	Not known	V	Victim	Y	Yes
NA	Not applicable	NR	Not recorded	VW	Victim witness	YOT	Youth offending team

Updating - arrest and bail						
	Y	N	NA	NK	NR	Total
If a suspect has been arrested is there evidence that the victim witness was notified within one working day if V or I or otherwise within five working days?	29	12	45	3	17	106
If the suspect was released with NFA being taken is there evidence that the victim witness was notified within one working day if V or I or otherwise within five working days?	1	2	84	2	17	106
If the suspect is released on police bail is there evidence that the victim witness was notified within one working day?	20	12	54	3	17	106
If the police bail conditions were altered was there evidence that the victim witness was notified within one working day?	0	2	85	2	17	106
Updating - decisions to bring criminal proceedings						
If a suspect was interviewed and a file submitted for a decision on prosecution or a summons to be issued is there evidence that the victim witness was notified within three working days of the interview?	4	9	73	3	17	106
If a summons was issued by the court is there evidence that the victim witness was notified of the date of first hearing within five working days of the police being notified?	0	1	86	2	17	106
When a decision was made to prosecute or not prosecute was there evidence that the victim witness was notified within one working day if V or I or otherwise within five working days?	11	8	67	3	17	106
Updating - bailing of persons to court						
If a suspect was charged and bailed to attend court is there evidence that the victim witness was notified of this, the court date and any bail conditions within one working day if V or I or otherwise within five working days?	25	7	55	2	17	106
If bail conditions were amended, is there evidence that the victim witness was notified within one working day if V or I or otherwise within five working days?	0	1	86	2	17	106
If the police decided to apply to court to remand the suspect in custody is there evidence that V and or I victim witnesses were notified of this and the date of the remand hearing within one working day?	2	2	83	2	17	106
If a suspect is remanded in custody by the police is there evidence that the victim witness was notified within one working day if V or I or otherwise within five working days?	2	2	83	2	17	106
If the suspect was granted bail by the court is there evidence that the victim witness was notified of this and relevant conditions and what to do if these are broken within one working day if V or I or otherwise within five working days?	5	22	62	2	15	106
Updating - other						
If a suspect was subject to a non-court disposal is there evidence that the victim witness was notified within one working day if V or I or otherwise within five working days?	0	0	89	3	14	106
Where the perpetrator of the crime is under 18 is there evidence that the victim witness's contact details were passed to the YOT to enable restorative justice initiatives or was it recorded that the victim witness did not wish the police to do this?	0	11	79	2	14	106
Overall						
	Poor	Sat.	Good	NA	NK	Total
Overall assessment of service provided to the victim witness/witness?	30	47	29	0	0	106

Analysis of CPS actions						
Investigation stage						
	Y	N	NA	NK	NR	Total
Was EIA sought in this case?	7	53	0	0	0	60
Was EIA given and recorded in writing?	15	1	44	0	0	60
Did the EIA consider victim and witness needs and issues if any?	15	11	33	1	0	60
Did the action plan address any witness needs or issues?	12	12	35	1	0	60
Pre-charge decision stage						
		CPSD	DD	Area	NA	Total
Was the PCD done by CPSD/Daytime Direct/area?		6	19	33	2	60
	Y	N	NA	NK	NR	Total
Did the PCD consider the credibility and reliability of the victim and witnesses?	101	2	3	0	0	106
Was the threshold test applied correctly?	5	1	54	0	0	60
Was the reason for applying the threshold test recorded correctly?	5	1	54	0	0	60
Was the full Code test applied correctly at the PCD stage, including at initial review stage in non-PCD cases? (excluding threshold test cases).	54	0	6	0	0	60
Did any action plan agreed include any actions concerning witness needs?	29	29	48	0	0	106
	Poor	Sat.	Good	NA	NK	Total
What is the quality of the action plan?	12	12	6	30	0	60
	Y	N	NA	NK	NR	Total
Was any additional requested information not necessary for the charging decision?	2	0	58	0	0	60
Were equality and human rights factors weighed appropriately and all relevant reasoning recorded?	60	0	0	0	0	60
Was there sufficient information from the police regarding the needs of the witness?	75	31	0	0	0	106
Were the needs of the witness considered by the charging lawyer?	64	39	3	0	0	106
Is there evidence that the lawyer correctly identified whether the witness was vulnerable and/or intimidated?	74	27	5	0	0	106
Did the charging advice cover adequately consideration of the need for special measures if appropriate?	31	48	27	0	0	106
Was the need for an early special measures meeting considered? (with witness)	1	90	15	0	0	106
Was there a Victim Personal Statement available at PCD?	3	56	4	0	0	63
If not is there evidence that was one was requested by the lawyer?	3	43	17	0	0	63
Was bail or custody considered correctly to protect the victim/witness and public (threshold/full Code test)?	50	0	10	0	0	60
			Cau.	NFA	NA	Total
If the decision was not to charge was it caution/NFA?			0	10	50	60

Cau.	Caution	IE	Insufficient evidence	NG	Not guilty	PI	Not in the public interest
DD	Daytime Direct	IM	Intermediary	NK	Not known	Sat.	Satisfactory
EIA	Early investigative advice	N	No	NP	No plea	VPS	Victim Personal Statement
G	Guilty	NA	Not applicable	NR	Not recorded	Y	Yes
		NFA	No further action	PCD	Pre-charge decision		

	IE	PI	NA	Total		
If NFA taken, why was this decision made? (standard response plus comment)	10	0	50	60		
	Y	N	NA	NK	NR	Total
Was any restorative justice considered appropriately with the victim?	0	0	62	0	1	63
Was the pre-charge decision timely?	51	7	2	0	0	60
Was the case flagged correctly on CMS?	48	12	0	0	0	60
Was the victim notified by CPS of any decision not to charge?	0	1	62	0	0	63
Was this done within the requisite time scale (one day for V and/or I or five days)?	0	1	62	0	0	63
In appropriate cases was a meeting offered to the victim?	0	3	60	0	0	63
	Poor	Sat.	Good	NA	NK	Total
What was the quality of the DCV letter?	1	0	0	62	0	63
RATE: Was the overall quality of the MG3/3A?	22	26	10	2	0	60
Information recording						
	Y	N	NA	NK	NR	Total
Does the file contain a fully completed MG11 (reverse of form) with witness information?	31	20	38	0	0	89
Does the file contain a fully completed MG2?	42	44	3	0	0	89
Does the file contain a fully completed up to date MG10 for each witness?	82	5	2	0	0	89
Case progression						
	G	NG	Mixed	NP	NK	Total
What plea was entered?	4	45	1	1	0	51
	Y	N	NA	NK	NR	Total
Did the CPS give timely notification to the WCU regarding witness requirements at trial?	45	1	5	0	0	51
Special measures						
Was there a special measures application made?	57	17	15	0	0	89
Were the correct special measures sought, taking account of the views of the witness?	49	3	32	5	0	89
	Live link	ABE played	Screens	IM	NA	Total
What special measures were requested?	21	38	2	0	31	92
	Y	N	NA	NK	NR	Total
Was the special measures application made in time?	51	6	32	0	0	89
Was the application granted by the court?	56	0	33	0	0	89
	Out of time/deemed not appropriate by the court			NK	NR	Total
If it was refused, what was the reason?	0			89	0	89
	Y	N	NA	NK	NR	Total
Was the outcome of the application for special measures made known to the WCU?	40	3	34	12	0	89
Did the WCU notify the witness of the outcome of the application?	39	0	34	15	0	88

Case preparation						
	Poor	Sat.	Good	NA	NK	Total
How well were the witness contacts documented by the WCU?	16	26	39	3	0	84
	Y	N	NA	NK	NR	Total
Was a full needs assessment done on each witness after a not guilty plea?	51	26	11	1	0	89
Is there evidence that the witness was provided with a copy of the Witness in Court leaflet or equivalent?	81	2	5	1	0	89
Is there evidence that the witness, if under the age of 17 and the case involves sex, violence or cruelty, was provided with a copy of the Young Witness Information Pack or equivalent?	41	3	26	16	3	89
	Poor	Sat.	Good	NA	NK	Total
Describe the quality of instructions to counsel/crown advocate. Do they contain information about witnesses where appropriate (including in appropriate magistrates' court cases)? (This excludes any instructions given in the MG3 to the advocate at first hearing). Please comment.	4	12	9	25	0	50
	Y	N	NA	NK	NR	Total
Was there a conference with counsel/crown advocate?	9	14	27	0	0	50
	Poor	Sat.	Good	NA	NK	Total
How well was the case managed and the prosecution conducted firmly and fairly?	10	37	4	0	0	51
	Y	N	NA	NK	NR	Total
Was an early special measures meeting held?	5	81	3	0	0	89
Were any requirements of prosecution witnesses indicated to the court i.e. any special needs/availability etc?	41	7	37	0	3	88
	Poor	Sat.	Good	NA	NK	Total
How good was the communication between CPS and the WCU during the case over witness issues?	7	41	12	1	0	61
	Y	N	NA	NK	NR	Total
Was there any sensitive unused material regarding this witness?	17	68	4	0	0	89
If yes was it dealt with appropriately?	16	0	73	0	0	89
Was there any third party material about this witness?	19	66	4	0	0	89
If yes were they advised about their rights in relation to disclosure of such material?	15	2	72	0	0	89
Was consideration given to obtaining a witness summons and/or warrant if appropriate?	13	13	63	0	0	89
Was a pre-trial visit offered?	60	3	19	0	7	89
If yes did a pre-trial court visit take place?	9	12	19	2	47	89
Did the witness attend at court and the case was adjourned?	5	45	6	0	0	56
What was the reason for the adjournment?	0	0	3	0	0	3
Could the CPS have done anything to avoid the adjournment?	1	3	53	0	0	57
Is there any evidence that the victim was consulted over any offers/basis of plea at court?	4	4	43	0	0	51
Is there any evidence that the victim was notified within one or five working days of any substantial change to or discontinuance of any charge(s)?	23	4	24	0	0	51

	Poor	Sat.	Good	NA	NK	Total
What was the quality of the letter sent?	4	13	5	29	0	51
	Y	N	NA	NK	NR	Total
Was this a case where a meeting was required to be offered?	10	44	1	0	0	55
If no, was the reason why it was not offered recorded?	2	4	49	0	0	55
If so did a meeting take place?	2	7	46	0	0	55
Was there a successful outcome?	22	30	0	0	0	52
If not was it due in part or in full to witness difficulties? (Please provide standard answer and comment).	16	15	21	0	0	52
Were appropriate orders sought at sentencing such as compensation, restraining orders etc?	22	0	31	0	0	53
Was there a VPS for the sentencing hearing?	6	23	21	0	1	51
If yes, was it appropriately drafted?	5	0	46	0	0	51
Overall						
	Poor	Sat.	Good	NA	NK	Total
What was the overall level of service provided to this witness by the CPS?	29	56	21	0	0	106

Note: the figures contained in our data table vary in their total number, but are accurate, reflecting the appropriate number of victims, witnesses or cases applicable to each question.

ANNEX C - OUTCOMES OF OBSERVED TRIALS: KEY FINDINGS

During the on site phase of this inspection we observed five cases listed for trial in each area. There were 15 magistrates' and ten Crown Court trials all involving young witnesses. Where possible we observed part of the trial and then interviewed the young witnesses. Key findings from these observations contributed to our findings in the main body of the report and a summary of the outcomes of the trials is set out below:

- 18 young victims and 35 young witnesses were warned to attend these trials to give evidence together with 38 adult witnesses, a total of 91 witnesses.
- In total 12 (48%) out of the 25 trials were effective either during the period of our observation or subsequently. Nine of the trials ran as trials on the first trial date with the young witnesses giving evidence. A further two were effective on the second trial date and one effective on the third trial date.
- In ten cases (40%) the defendant(s) pleaded guilty as charged or on an agreed basis or to an alternative charge on the day of trial when witnesses had attended court in all but two cases. Some of these were not on the first trial date.
- None of the guilty pleas were indicated before the trial date which would have enabled the young witnesses to be de-warned and avoid them having to attend court unnecessarily.
- Three cases (12%) were discontinued on the day of trial. The defendant was bound over in one case, the victim failed to attend in the second and the adult victim failed to come up to proof in the third and the case was stopped before the young witness gave evidence.
- Of the 53 young victims and witnesses 19 (35.8%) had been ABE interviewed.
- In 18 out of the 25 cases applications for special measures were made and all were granted. Four (22.2%) of the applications were outside the timescales prescribed. The willingness of the courts to grant oral applications at first hearings where entitlement to special measures is not in dispute has assisted in this improvement as a large number of the applications made were dealt with in this way.
- No witness summons was sought in any of the cases observed.
- Two of the trials were listed as floating trials.

ANNEX D - INSPECTION METHODOLOGY

Our findings are drawn from fieldwork in five CJS areas where we met with representatives of the judiciary, managers and staff responsible for dealing with victims and witnesses from the police, CPS, HMCTS and the MOJ. We also conducted structured interviews with lead representatives at a national level from each of the criminal justice agencies as well as Victim Support (VS), the Witness Service (WS), the Young Witness Service (YWS) and those involved with producing the report *Measuring up?*²⁵ and its follow-up.

We spoke to a total of 50 young victims and witnesses (those under 18 years of age) after they had given their evidence or the case cracked with guilty pleas. Where possible the review included both prosecution and defence witnesses, although in practice obtaining views and data on the latter proved difficult. We take account of the fact that these young victims and witnesses are the ones who attended at court to give evidence when considering their observations.

Although we observed victims and witnesses in the courtroom giving evidence and being cross examined we do not in this report make any assessment regarding the quality of advocacy seen as this was outside the scope of this inspection. Other inspections have taken or will take place to consider this issue.²⁶

Inspectors also followed the progress of 25 magistrates' and Crown Court cases that were listed for trial during our on site phase of this inspection. This was to provide a snapshot of results and an overview of the effectiveness of case preparation and progression. Inspectors observed these cases at court and some of the young witnesses from these cases were interviewed.

We also conducted a file examination of 60 recently completed cases involving young victims and witnesses from both the magistrates' and Crown Court. Both the police file and the CPS file were reviewed for each case. The results of our interviews with young witnesses and our file examination are contained in Annex B and Annex C. The file examination considered how well young victim and witness needs had been identified and responded to throughout the criminal justice process. This included how well the investigating officer identified their needs at the start of the case; whether those needs were considered by the prosecutor when charging or initially reviewing the case; whether special measures were considered appropriately and applied for in a timely way; and to assess how well young victims and witnesses were kept informed and supported throughout the case.

A review of victim and witness literature was carried out including relevant reports referred to earlier in this report, new national guidance that has been issued for the police and CPS relating to victim and witness matters and the new legislation that has now come into force under the Coroners and Justice Act 2009.

25 *Measuring up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings* July 2009 and *Young witnesses in criminal proceedings; A progress report on Measuring up? (2009)* June 2011 both by Joyce Plotnikoff and Richard Woolfson Lexicon Limited.

26 HMCPSI: *Follow-up report of the thematic review of the quality of prosecution advocacy and case presentation* August 2011. The Advocacy Training Council: *Raising the Bar* March 2011.

ANNEX E - SUMMARY OF GOOD PRACTICE IDENTIFIED

- 1 In Humberside, all crimes that involve a young victim or witness are passed initially to the police Public Protection Unit where an assessment is made as to how best to obtain the evidence, whether by written statement or video interview. A vulnerable victim officer visits the home of the witness to make a further assessment, if required. This helps achieve better consistency in achieving best evidence.
- 2 Gloucestershire Constabulary has customised its MG11 witness statement and needs assessment form to incorporate a brief definition of a vulnerable and intimidated witness to assist officers when completing the form.
- 3 Nottinghamshire Police trains all Criminal Investigation Department (CID) officers in video interviewing as part of their detective training course. They then support uniformed colleagues by undertaking video interviews when the need arises.
- 4 Lancashire Constabulary has purchased mobile recording equipment which allows video interviewing to be done in a victim's home. An experienced interviewer said that this had improved the quality of evidence, as the young witnesses were more relaxed and comfortable in their home environment.
- 5 Humberside Police was conducting a quality audit at the time of our inspection. This consisted of a dip sample of 20 ABE interviews being checked by training staff for quality, with the results being fed back to the interviewer and their supervisor. The results of this audit will also inform area trainers of aspects to concentrate on in the delivery of training.
- 6 In Humberside, a specialist vulnerable victim officer dealt with a 14 year old victim who had the learning age of a six year old. She requested an intermediary to make sure that the questions would be pitched at the right level in the video interview. The intermediary helped construct the questions in an appropriate manner, a process described as "very valuable" by the officer.
- 7 In Nottingham, the Victim Information Project (VIP) is currently being piloted to provide an enhanced package of support for children and families living within the Nottingham City area. The service has been commissioned for a 12 month period, and supported by Victim Support and it commenced in December 2010. Children who have been referred following a disclosure of child abuse or neglect and who meet referral criteria for the Nottinghamshire Police Child Abuse Investigation Unit (CAIU) are eligible to receive:
 - an early psychosocial needs assessment with a face-to-face interview with parent/carer (and child if appropriate);
 - a specially developed victim information pack;
 - a named victim care worker to act as link between local services and victims for the duration of the investigation and criminal proceedings; and
 - a follow-up interview with parents and child after a period of "watchful waiting" to further determine the needs of family members for referral to appropriate services at this time.The pilot is being evaluated by Nottingham University.

- 8 In Gloucester there was a new practice for particularly vulnerable witnesses. On the day of the trial the police show the DVD to the witness at their home and then bring them in to court for their cross examination. This minimises waiting time on the day, enables the effective use of court resources and ensures that the witness sees the evidence only once in familiar surroundings shortly before they are questioned about it.
- 9 In some courts, mainly magistrates' and youth courts, local practice is for oral special measures applications to be acceptable in cases where young victims and witnesses are automatically entitled e.g. by reason of age and the offence is violent or sexual in nature. This reduces unnecessary work and speeds up the process.
- 10 In one area witnesses had attended to watch the defendant being sentenced in the Crown Court via a remote link to the magistrates' court.
- 11 In a different area in an appeal case heard in the Crown Court it was arranged for the young witness to give evidence again from the local magistrates' court rather than in the Crown Court.
- 12 In Hull young people were found not to relate to the Going to court DVD very well as it was described as "too home counties". A local youth drama group were involved making a new DVD which young local children could identify with. Sponsorship from a local business had been secured.
- 13 In one case inspectors were informed that a young witness was given the choice whether to accept an earlier floating trial date rather than a later fixed date in order to try to ensure that her evidence was given before examinations started.
- 14 At Birmingham Crown Court it was agreed that the court clerk would remind the judge when a young witness had been waiting for between 60 and 90 minutes. The Witness Service sends a message to the clerk in court by using the Xhibit instant messaging system. The judge can then take a view about how soon the witness is likely to be required, and release the witness if appropriate.
- 15 At Hull Crown Court if a young witness lives within an hour or so's travelling distance from the court they are allowed to wait at home, and travel in when the court is actually ready to hear their evidence. The Resident Judge is on record as saying that the court will wait for the witness rather than the other way around.

ANNEX F - GLOSSARY OF TERMS USED IN THE REPORT

Achieving best evidence

Good practice in interviewing witnesses in order to enable them to give their best evidence in criminal proceedings.

Action plan

A list of instructions to the police outlined by the duty prosecutor together with completion dates.

Adverse case

A NCTA, JOA, JDA (see separate definitions) or one where magistrates decide there is insufficient evidence for an either way case to be committed to the Crown Court.

Attention deficit hyperactivity disorder (ADHD)

A group of behavioural symptoms that include inattentiveness, hyperactivity and impulsiveness. Attention deficit disorder (ADD) is a type of ADHD. Common symptoms of ADHD include a short attention span, restlessness, being easily distracted and constant fidgeting. Many people with ADHD also have additional problems, such as sleep disorders or learning difficulties.

However, ADHD has no effect on intelligence (NHS.uk).

Agent

Solicitor or barrister not directly employed by the CPS who is instructed by them, usually on a sessional basis, to represent the prosecution in the magistrates' court.

Associate prosecutor (AP)

A CPS employee who is trained to present straightforward cases on pleas of guilty or to prove them where the defendant does not attend the magistrates' court. This role has been extended and includes trials of non-imprisonable offences.

Aspect for improvement (AFI)

A significant weakness relevant to an important aspect of performance (sometimes including the steps necessary to address this).

Case management system (CMS)

IT system for case tracking and case management used by the CPS.

Code for Crown Prosecutors (the Code)

The public document that sets out the framework for prosecution decision making. Crown prosecutors have the DPP's power to determine cases delegated, but must exercise them in accordance with the Code and its two stage test - the evidential stage and the public interest stage. Cases should only proceed if, firstly, there is sufficient evidence to provide a realistic prospect of conviction and, secondly, if the prosecution is required in the public interest (see also "Threshold test").

Evidential stage - The initial stage under the Code test - is there sufficient evidence to provide a realistic prospect of conviction on the evidence?

Public interest stage - The second stage under the Code test - is it in the public interest to prosecute this defendant on this charge?

Committal

Procedure whereby a defendant in an either way case is moved from the magistrates' court to the Crown Court for trial, usually upon service of the prosecution evidence on the defence, but occasionally after consideration of the evidence by the magistrates.

Code of Practice for Victims (Victims' Code)

This was introduced in April 2006; it sets out the minimum level of service to victims and imposes obligations on 11 organisations including the police, CPS, courts, youth offending teams, probation service and prisons. The Code also requires an enhanced level of service to victims and witnesses who are vulnerable or intimidated. LCJBs were responsible for reporting progress to OCJR as was. In many cases the delivery of NWNJ requirements and those contained in the Code have been run together.

Core Quality Standards (CQS)

Standards which set out the quality of service that the public are entitled to expect. The standards reflect legal and professional obligations. These were introduced in March 2010.

Core Quality Standards Monitoring (CQSM)

A system of internal monitoring against the standards, whereby each area undertakes an examination of a sample of completed cases to assess compliance against standards. This was implemented in July 2010.

Court Charters for the magistrates' courts and Crown Court

Public information leaflets that set out standards of customer service all court users can expect from any court in England and Wales. One Charter covers the Crown Court and another, the magistrates' courts.

CPS Direct (CPSD)

This is a scheme to supplement the advice given in areas to the police and the decision making as to charge under the charging scheme. Lawyers are available on a single national telephone number out of normal office hours so that advice can be obtained at any time. It is available to all areas.

Cracked trial

A case listed for a contested trial which does not proceed, either because the defendant changes his plea to guilty, or pleads to an alternative charge, or the prosecution offer no evidence.

Crown advocate (CA)

A lawyer employed by the CPS who has a right of audience in the Crown Court.

Daytime Direct (DD)

Daytime Direct is the name given to the provision of area telephone charging advice to the police during the week from 9 a.m. to 5 p.m.

Direct Communication with Victims (DCV)

DCV was introduced in 2001 by the CPS. Under this scheme the CPS commits to provide an explanation to victims where a charge is discontinued or substantially reduced or increased in gravity. Normally this explanation is provided in a letter, but in certain types of cases a meeting is offered to the victim should they wish to discuss the decision further. Now encompassed within the Core Quality Standard 8.

Discharged committal

A case where the prosecution is not ready to commit the defendant to the Crown Court, but the magistrates' court refuses to adjourn the case.

Disclosure

The prosecution must disclose to the defence all material gathered during the course of the investigation which the prosecution does not intend to use and which passes the disclosure test. The test for disclosure is that the material "might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused, and which has not previously been disclosed".

Discontinuance

The dropping of a case by the CPS in the magistrates' court, whether by written notice (under s.23 Prosecution of Offences Act 1985), withdrawal, or offer of no evidence at court.

Early consultations (EC)

Early consultation and advice may be sought and given in any case (including those in which the police may themselves determine the charge) and may include lines of enquiry, evidential requirements and any pre-charge procedures. In exercising this function, crown prosecutors will be proactive in identifying and, where possible, rectifying evidential deficiencies and identify those cases that can proceed to court for an early guilty plea as an expedited report.

Early consultation should also seek to identify evidentially weak cases, which cannot be rectified by further investigation, either at that stage or at all, so that these investigations may, where appropriate, be brought to an early conclusion.

Early investigative advice (EIA)

Prosecutors may provide guidance and advice in serious, sensitive or complex cases and any case where a police supervisor considers it would be of assistance in helping to determine the evidence that will be required to support a prosecution or to decide if a case can proceed to court.

Specific cases involving a death, rape or other serious sexual offence should always be referred to a prosecutor as early as possible. The advice or decision of the prosecutor will be set out in an MG3 and an action plan will precisely specify any further work with an agreed date for completion.

Early special measures meetings

An early special measures meeting is an opportunity for the investigating police officer and the CPS prosecutor to discuss the needs of prosecution witnesses who may be considered vulnerable or intimidated. In particular the eligibility of witnesses to benefit from special measures will be discussed.

Every Witness Matters strategy

The HMCTS Victim and Witness Branch devised a witness and victim strategy called Every Witness Matters.

This was first published in February 2005 and has since been revised and updated. This document sets out the steps that HMCTS is taking to improve the services it provides to victims and witnesses.

HMCTS appointed victim and witness champions in each of the 42 areas in October 2005. Their task is to provide a link from Witness Improved Services Programme (WISP) and oversee implementation of victim and witness initiatives at the area level.

Good practice

An aspect of performance upon which the Inspectorates not only comments favourably, but considers reflects a manner of handling work developed by an area which, with appropriate adaptations to local needs, might warrant being commended as national practice.

Her Majesty's Courts Service (HMCS)

The agency of the Ministry of Justice responsible for the running and administration of the courts and since 1 April 2011 tribunals as well. Now known as Her Majesty's Courts and Tribunals Service (HMCTS).

Instructions to counsel

The papers which go to counsel setting out the history of a case and how it should be dealt with at court, together with case reports. These are sometimes referred to as the "brief to counsel".

Indictable only, indictment

Cases which can be heard only at the Crown Court (e.g. rape, murder, serious assaults). The details of the charge(s) are set out in a formal document called the indictment.

Ineffective trial

A case listed for a contested trial that is unable to proceed when it was scheduled to start, for a variety of possible reasons, and is adjourned to a later date.

Intermediary

The Youth Justice and Criminal Evidence Act 1999 ('the YJCE Act') created the provision for a range of 'special measures' for cases involving vulnerable and intimidated witnesses to give their best evidence in court, one of which is the intermediary special measure.

The *Witness Intermediary Scheme (WIS)* was initiated by the Ministry of Justice to implement the intermediary special measure and through which Registered Intermediaries operate. The lower case spelling of the word intermediary in the context of the YJCE Act legislation indicates that this is a generic term.

A *Registered Intermediary* is a professional communications specialist who has been recruited, selected and accredited by the Ministry of Justice, and whose details are recorded on the Intermediary Register, the WIS's national database. Such an individual will be known as a Registered Intermediary (RI). Please note the upper case spelling used for Registered Intermediary in the context of the WIS. This is a specific description.

Non-registered intermediary - The WIS does not use or appoint non-registered intermediaries, i.e. those intermediaries not on the Intermediary Register. In this context, a non-registered intermediary is any individual - professionally trained or otherwise - who has not been recruited, selected or accredited by the Ministry of Justice as an RI operating within the WIS.

Intimidated witnesses

See vulnerable or intimidated witnesses below.

Judge directed acquittal (JDA)

Where the judge directs a jury to find a defendant not guilty after the trial has started.

Judge ordered acquittal (JOA)

Where the judge dismisses a case as a result of the prosecution offering no evidence before a jury is empanelled.

Libra

The Libra application replaced the magistrates' courts' previous IT systems with a single national case and accounts management system. With the introduction of Libra all magistrates' courts could adopt national standard ways of working to maximise efficiency and improve customer service.

Local Criminal Justice Board (LCJB)

These were established to improve the local delivery of criminal justice. Members include heads of the main criminal justice agencies and, in some areas, other criminal justice partners. The central funding for these ended in March 2011 and it is unclear how many will remain funded by agencies locally.

Local Safeguarding Children Board (LSCB)

LSCB includes representatives of relevant bodies and individuals who work together to safeguard and promote the welfare of children in local areas.

List of witnesses to attend court (LWAC)

This is a document produced by the CPS and used to notify witness care units which witnesses are required to attend court.

MG2

A form used by the police to provide an initial assessment of witness needs. It includes information used by the CPS for a special measures meeting in respect of any vulnerable or intimidated witness and to provide information to the CPS to apply for special measures to the court. It also records the views of the witness(es) in need of special protection.

MG3

A charging report form initially completed by the police to request a charging decision, then completed by the CPS prosecutor to record the charging decision or other investigative advice.

MG6

A form completed by police that provides additional information to the prosecutor. This includes relevant details about the evidence or information about witnesses and some standard questions which assist in identifying victim and witness issues.

MG11

The witness statement form. Witness statements, including those of victims, together with full personal details and a record of any assistance or special needs that would need to be addressed to assist them attend court are recorded. This type of information is entered into a designated box on the reverse of the statement form.

No case to answer (NCTA)

Where magistrates dismiss a case at the close of the prosecution evidence because they do not consider that the prosecution have made out a case for the defendant to answer.

No further action (NFA)

Where a charge cannot be advised due to lack of evidence or where a prosecution would not be in the public interest, the file will be finalised as no further action.

No Witness No Justice (NWNJ)

A partnership project of the CPS, ACPO, Victim Support and the Witness Service to improve witness care. Witness care units were introduced across all areas by the end of December 2005 through the NWNJ project. The WCUs are jointly staffed by police and CPS personnel and provide support and information to victims and witnesses from the point of charge through to the conclusion of the case. The support provided to victims and witnesses is tailored to the needs of the individual.

Office for Criminal Justice Reform (OCJR)

A cross-departmental team that supports all the criminal justice agencies in working together to provide an improved service to the public. It works on behalf of Ministers in the Home Office, Ministry of Justice and the Attorney General's Office. OCJR has now been moved under the MOJ umbrella and is now the Criminal Justice Reform Directorate in which there is a Victims and Witnesses Unit.

Optimum Business Model (OBM)

A CPS initiative for handling its casework. The model sets out a framework of structures, roles and processes, and aims to standardise these across different units and areas to improve efficiency and effectiveness. Through the OBM, volume cases are assigned to a team for preparation, rather than being the responsibility of any one individual.

Out of court disposal (O OCD)

Cautions, conditional cautions, youth diversions (reprimands and final warnings) and decisions not to charge on evidential or public interest grounds.

Paralegal officer

A member of CPS staff who deals with, or manages, day-to-day conduct of a prosecution case under the supervision of a crown prosecutor and, in the Crown Court, attends court to assist the advocate.

Plea and case management hearing (PCMH)

A PCMH takes place in every case in the Crown Court and is often the first hearing there after committal or sending in indictable only cases. Its purpose is twofold: to take a plea from the defendant, and to ensure that all necessary steps have been taken in preparation for trial or sentence and that sufficient information has been provided for a trial date or sentencing hearing to be arranged.

Pre-Trial Witness Interview Scheme (PTWI)

In December 2005 the Director of Public Prosecutions signed a Code of Practice that permitted prosecutors to interview witnesses for the purpose of assisting them to assess the reliability of a witness's evidence or to understand complex evidence. This was piloted in 2006 and, following an independent evaluation, the scheme was implemented in all CPS areas by April 2008.

Prosecution team performance management (PTPM)

Joint analysis of performance by the CPS and police locally, it is used to consider the outcomes of charging and other joint processes.

Prosecutors' Pledge

A ten point pledge introduced in October 2005 which details the level of service victims can expect from prosecutors. The Pledge mainly relates to the prosecutor's role at court. There is also a synergy with some of the minimum requirements that are delivered through the NWNJ initiative.

Public Service Agreement (PSA)

Government targets for the public sector. No longer used as targets.

Quality of Service Commitment

From November 2006 all police forces have been required to meet service standards set out in the Commitment. These include improving ease of contact with the police, keeping victims informed of progress and engaging with communities.

Recommendation

This is normally directed towards an individual or body and sets out steps necessary to address a significant weakness relevant to an important aspect of performance (i.e. an aspect for improvement) that, in the view of the Inspectorates, should attract the highest priority.

Registered Intermediary

Please see Intermediary.

Review, initial, continuing, summary trial etc

The process whereby a crown prosecutor determines that a case received from the police satisfies and continues to satisfy the legal test for prosecution in the Code. One of the most important functions of the CPS.

Section 51 Crime and Disorder Act 1998

A procedure for fast-tracking indictable only cases to the Crown Court, which now deals with such cases from a very early stage - the defendant is sent to the Crown Court by the magistrates.

Sensitive material

Any relevant material in a police investigative file not forming part of the case against the defendant, the disclosure of which may not be in the public interest.

Special measures

The Youth Justice and Criminal Evidence Act 1999 provides for a range of special measures to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence. These include video recorded evidence in chief, a live link either within the court building or to another location, screens around the witness box, evidence given in private (in sex offence cases and cases involving intimidation only), removal of wigs and gowns by judges and lawyers, examination of the witness through an intermediary and aids for communication through a communicator or interpreter. Some measures have been available for many years, for example screens, whilst others only more recently such as intermediaries. The Coroners and Justice Act 2009 extends the definition of

vulnerable to all children under 18 years and came into force in June 2011. Another provision for the use of pre-recorded cross examination is not yet in force.

Statutory charging

The Criminal Justice Act 2003 took forward the recommendations of Lord Justice Auld in his review of the criminal courts, so that the CPS determine the decision to charge suspects in the more serious or contested cases. The charging scheme was phased in across all areas by April 2006. Charging arrangements are currently under review by the CPS.

Summary offences

Those offences which are triable only in the magistrates' courts, e.g. most motoring offences, minor public order offences, common assault etc.

Summons

An order to appear or produce evidence in a court.

Threshold test

The Code for Crown Prosecutors provides that where it is not appropriate to release a defendant on bail after charge, but the evidence to apply the full Code test is not yet available, the threshold test should be applied.

Victims' Advocates Scheme

Under this scheme relatives of murder and manslaughter victims are given the choice, if they wish, to address the court regarding the effects the death has had on them, after conviction and before sentence. Relatives of victims can also obtain up to 15 hours of free personal and legal advice on matters arising from the death but not pertaining to the criminal investigation and trial. The pilot began in April 2006 and finished in April 2008. Most of the initiatives from the scheme were adopted by the CPS under the Victim Focus Scheme.

Victim and Witness Care Delivery Unit (VWCDU)

A joint police and CPS unit with a remit to build on the work of the national implementation for No Witness No Justice and maintain a focus on the delivery and standards of service to victims and witnesses across both agencies. Its objectives include ensuring CPS compliance with all victim and witness commitments and supporting areas in the delivery of CPS and police commitments to victims and witnesses. The Victim and Witness Care Delivery Unit, was disbanded on 1 September 2010 as a result of the Capability Review.

Victim Focus Scheme

The Victim Focus Scheme was announced by the Attorney General in June 2007 and rolled out that October. It delivers most of the initiatives from the Victims' Advocates Scheme pilot. Under the scheme prosecutors offer to meet bereaved families in homicide cases after charge in order to explain processes and procedures, including the making of a Victim Personal Statement.

Victim Personal Statement (VPS) scheme

This scheme dates back to 2001 and is intended to give a voice to victims of crime by providing them with an opportunity to tell the CJS how the crime has affected them - physically, emotionally, psychologically, financially or in any other way. Victims should be given an opportunity to make a VPS when a witness statement is taken. They are then able to provide a further statement at a later date, describing any longer-term affects.

Victim Support

This is the national charity which helps people affected by crime and provides free and confidential support for victims or witnesses, whether or not the crime is reported to the police.

Victim Support Plus

In 2007 the Government announced the creation of a new, enhanced Victim Support Plus Service. This is a new approach by Victim Support offering a quicker response time to victims, a wide range of services in addition to emotional and practical support (e.g. lock fitting, childcare, transport), additional resources available to buy in services a victim needs that are not otherwise available (provided by central Government) and continued emotional support using more focused and structured volunteer interventions.

Victims' Advisory Panel

This is a statutory body set up in March 2003 to enable victims of crime to have their say in both the reform of the CJS and in related developments for victims. It is made up of people who have themselves been victims of crime. Its objectives include advising the Home Secretary, Lord Chancellor and Attorney General of the views of victims of crime and also to offer views and advice on prevention of crime and generally contributing to developing and safeguarding the rights of victims.

Vulnerable or intimidated witnesses

Vulnerable witnesses are defined as all child witnesses under 18; and any witness whose quality of evidence is likely to be diminished because they:

- are suffering from a mental disorder (as defined by the Mental Health Act 1983);
- have a significant impairment of intelligence and social functioning;
- have a physical disability or are suffering from a physical disorder.

Complainants to sexual offences are defined by Section 17(4) of the Act as automatically being defined as an intimidated witness unless they wish to opt out. Witnesses to certain offences involving guns and knives are also automatically defined as intimidated witness unless they opt out - See section 17(5) of the Youth Justice and Criminal Evidence Act 1999 (as inserted by the Coroners and Justice Act 2009).

Witness care unit (WCU)

A joint police and CPS unit with a remit to build on the work of the national implementation for No Witness No Justice and maintain a focus on the delivery and standards of service to victims and witnesses across both agencies. Its objectives include ensuring CPS compliance with all victim and witness commitments and supporting areas in the delivery of CPS and police commitments to victims and witnesses.

There are over 150 witness care units in England and Wales responsible for managing the care of victims and prosecution witnesses from the point of charge to the conclusion of a case. They are staffed by witness care officers and other support staff whose role it is to keep witnesses informed of progress during the course of their case and provide practical support to encourage them to attend court to give their evidence e.g. help with childcare or travel arrangements.

Witness Charter

This is a non-statutory charter designed to build on the Victims' Code. It sets out core standards of service that all prosecution and defence witnesses should receive from the police and other criminal justice agencies..

Witness champion

In each HMCTS area there is a witness champion who provides the focal point for promoting and improving witness care through co-ordinating initiatives and linking with partners and the LCJB in this respect.

Witness liaison officer

In each courthouse there is a witness liaison officer who assists in co-ordinating the provision of facilities for witnesses and provides a focal point for liaison with other agencies.

Witness Service (WS)

The Witness Service is part of Victim Support and it helps victims, witnesses, their families and friends when attending any of the criminal courts in England and Wales. This includes facilitating pre-trial visits for witnesses, so that they are familiar with the courtroom and the

roles of the various people in court before they give their evidence, support on the day of the trial and accompanying the witness into the courtroom when they give their evidence and when the offender is sentenced (if agreed by the judge or magistrate). They also provide additional support to vulnerable and intimidated witnesses.

Enhanced Witness Service - In some areas the Witness Service receives additional funding to provide an enhanced service to vulnerable and intimidated witnesses. This comprises earlier contact and greater levels of pre-trial preparation, contact and support including preparation and support visits away from the court (often in the witness's own home); greater level of advocacy with other agencies on behalf of witnesses to ensure that they receive the help that they are entitled to or need; and support after the trial or if their case does not proceed to court. Some areas provide an enhanced service to certain categories of vulnerable and intimidated witnesses only, for example young witnesses.

Witness And Victim Experience Survey (WAVES)

A national telephone survey of victims and prosecution witnesses in cases that have resulted in a criminal charge on the provision of information and services and the extent to which this meets with expected standards.

Xhibit

An IT system in Crown Court. It includes electronic notice boards which can be updated by court clerks to display the progress of each trial as it happens.

Young Witness Service (YWS)

In some areas young witnesses receive enhanced support from a dedicated service. There are differing models around the country.

If you ask us, we can provide a synopsis or complete version of this booklet in Braille, large print or in languages other than English.

For information or for more copies of this booklet, please contact the HMCPSI Publications Team on 020 7210 1148,

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