Written evidence from NSPCC (CTS0087)

Executive summary

- The ambitions for court and tribunal reform set out in *Transforming our Justice System* set out in 2016 have the potential to make significant improvements to the experiences of young victims and witnesses in the criminal justice system. However, research commissioned by NSPCC suggests that there is still a way to go to realise this vision.
- High quality national rollout of s 28 could greatly benefit young witnesses. The delay in its rollout is disappointing, and the accessibility and effectiveness of live link technology is inconsistent.
- Supportive special measures for young witnesses are underutilised, and despite evidence of their effectiveness, registered intermediaries are both under-used and under-resourced.
- Lack of leadership from a range of stakeholders - including the Ministry of Justice (MoJ) and HM Courts and Tribunals Service (HMCTS) - underlies many of the shortcomings highlighted in this submission. Ownership of and clear accountability for young witness policy at a Ministerial and senior civil service level within the MoJ is essential going forward.
- We make recommendations to HMCTS and MoJ around access to the registered intermediary scheme; development of digital infrastructure; improvements to court facilities; access to live link technology, and quality assurance of s 28 recordings.

Introduction

1. The NSPCC is the leading children’s charity fighting to prevent child abuse in the UK and Channel Islands. We help children who have been abused to rebuild their lives, protect those at risk, and find the best ways of preventing abuse from ever happening. To achieve our vision, we:
   - create, deliver and evaluate services for children which are innovative, distinctive, and demonstrate how to enhance child protection;
   - provide advice and support to ensure that every child is listened to;
   - campaign for changes to legislation, policy, and practice to ensure the best protection for children; and
   - inform and educate the public to change attitudes and behaviours.

2. We welcome the Committee’s inquiry into how HMCTS is delivering the vision set out in *Transforming our Justice System*. This submission focusses on the questions posed by the Committee about the criminal justice system (CJS) and the increasing use of digital and video technology drawing on our research and policy work on the treatment of young witnesses and

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3 NSPCC has commissioned the University of Stirling to conduct research which explores the experiences of children and young people of their journey through the criminal justice system as a victim or witness. The project will hear directly from young people and build case studies that give insight for policy makers, professionals and the public into children’s experiences and how it can be improved. We anticipate the report will be published in early Autumn 2019 and we would be pleased to give the Committee further briefing about this project.
victims in the CJS. This work spans Plotnikoff and Woolfson’s 2009 report for the NSPCC *Measuring Up?* and our recent publication of the new research in *Falling Short: a snapshot of young witness policy and practice*. Analysis of these issues over more than a decade enables us to identify where progress has been made for young witnesses and victims’ access to justice and, crucially, where it has not.

3. The NSPCC has conducted research and policy work on the treatment of young witnesses and victims because it is essential that improvements are made to the way the criminal justice system currently operates. To tackle abuse it is vital that children and young witnesses are properly supported to enable them to give their best evidence so that perpetrators can be brought to justice.

**Effect of reforms on the criminal justice system**

4. The vision statement *Transforming our Justice System* of September 2016 proposed welcome changes that had the potential to improve the experience of the CJS for young victims and witnesses through the use of technology. In particular, ensuring roll out of special measures including pre-recorded cross-examinations for child victims under s 28 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) and widening provision for vulnerable witnesses to give evidence over a digital link, rather than being physically present in a court room or even a court building, seemed to offer promising alternatives to a process that could be long, frustrating and often retraumatising for children.

5. Despite the vision statement’s ambition that “a modernised and upgraded justice system would work even better for everyone”, the reality of young witnesses’ experiences leaves much to be desired. In February 2019, the NSPCC published Plotnikoff and Woolfson’s *Falling short?* report which provides evidence that provision of support is inconsistent and fragmented and, as a result, child witnesses and victims are still at risk of negative experiences in the criminal justice system. The researchers carried out 62 interviews and received 210 survey responses capturing the views and experiences of members of Government departments; legal professionals and associated organisations; the judiciary; charities; intermediaries; Police and Crime Commissioners; HMCTS Regional Witness Champions; SARCs, and others.

6. The research covered a number of areas relevant to the Committee’s Inquiry and we would encourage scrutiny of the full report and the evidence in it to understand the effects of HMCTS’ reforms, both implemented and proposed, on young witnesses and victims’ access to justice.

7. Some of the key themes involving the use of technology covered in depth in the report are addressed in this submission.

**Pre-trial recording of cross-examination of child victims**

8. The Government has yet to deliver a national roll-out of s 28 YJCEA.
9. In 2013, following adverse reports of cross-examination in child sexual exploitation trials, the Home Affairs Select Committee said: “we are at a loss to understand why the Ministry of Justice, 14 years after the Act was passed, has still failed to implement the measure.” Following the Home Affairs Select Committee’s welcome intervention, the provision was piloted in 2014 for young witnesses at the Crown Court in Liverpool, Leeds and Kingston upon Thames. In July 2016, plans for a national roll-out were announced but implementation was delayed yet again.

10. We note that in May 2018 the Justice Committee questioned the Minister at the time, Dr Phillip Lee, about the delays and he answered the Ministry of Justice: “very much hope to begin roll-out later this year.” In response to a parliamentary question in March 2019, the current Justice Minister Lucy Frazer stated: “we are rolling out pre-recorded cross examination provided for Section 28” but did not share details of timescales. This is an area where clarity and action from HMCTS and the Ministry of Justice is needed and we would encourage the Committee to follow up their previous questions on this topic with any witnesses called to give evidence as part of this inquiry.

11. The history of the implementation and national roll out of s 28 poses questions about the ability of the system to successfully deliver larger, more complex plans to move to a justice system where there is increasing use of online processes and video hearings.

**Delay**

12. The recognition that “justice delayed is justice denied” and the ambition in HMCTS’ transformation programme to improve efficiency and reduce delays in the criminal courts, including through the use of technology, is welcome. Crucial to ensuring the confidence of victims and witnesses in the system is realising the vision that “the majority of Crown Court trials are heard on the day on which they are listed to give everyone involved certainty, so that witnesses can be sure that they will give evidence as expected”.

13. However, the evidence in *Falling Short?* indicates that, three years after implementation of the strategy, young witnesses and victims are still experiencing unacceptable delays, both in terms of timeliness of cases and waiting times on the day.

14. Despite the existence of a Protocol to expedite cases involving young witnesses under 10 years, the report found a lack of central monitoring by HMCTS and other agencies of the timeliness and effectiveness of processes which were supposed to reduce delays in young witness cases. While most respondents thought delay from charge to completion in young witness cases had reduced in the previous year, the duration of cases relating to child sexual abuse involving physical contact (those most likely to involve young witnesses) had actually increased over time.

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4 Plotnikoff and Woolfson (2019), page 83; 117  
6 HC Deb, 19 March 2019, cW  
7 Plotnikoff and Woolfson (2019), page 18  
8 Plotnikoff and Woolfson (2019), page 29  
9 Plotnikoff and Woolfson (2019), page 27
15. A primary aim of s 28 pre-trial cross-examination is to reduce pre-trial delay for young and other vulnerable witnesses. Positively, the process evaluation conducted by the Ministry of Justice at the three pilot Crown Courts in 2014 found that the time from charge to cross-examination of vulnerable witnesses was significantly shorter (100 days or more) than in a sample of comparison cases.\(^{11}\) This data underlines why national roll-out of s 28 could help improve the experiences of young witnesses and victims.

**Support**

16. The availability of special measures such as pre-recorded cross-examination, the use of remote sites and live links are important in improving the experience of young witnesses and victims in the CJS. However, technology is not a panacea. Support is essential to enable young witnesses to access these special measures and make an informed decision on how they would like to give evidence in a way that best suits their needs and minimise risks of re-traumatisation during the court process.

17. *Falling Short?* illustrates the stark discrepancy between current practice and the vision statement aspiration that “victims of crime and vulnerable witnesses should be supported by clear and effective processes”. The research found that certain special measures were rarely used, including accompaniment of young witnesses by a neutral supporter of their choice\(^{12}\); closing the public gallery during young witness evidence in sexual offence cases\(^{13}\); combining special measures to preventing the defendant’s view of a child on the live link\(^{14}\); and giving evidence from another court location or a non-court site. Availability of non-court remote live link sites was uneven, with some areas having none.\(^{15}\)

18. *Falling Short?* also found that the children’s chapter of the Victims’ Code did not fully reflect all commitments and online young witness booklets and resources were hard to find. We understand that new versions of these materials are to be developed and we have encouraged HMCTS to engage with specialist and children’s organisations and young people themselves in the development of these resources.

19. Practice sessions on the live link technology are essential for young witnesses to be able to make an informed decision on how they would like to give evidence. However, only 29% of Witness Service and Outreach Service team leaders and intermediaries reported that young witnesses ‘almost always’ had the opportunity to practice during pre-trial court visits.\(^{16}\) Witness Service team leaders were also concerned that live link rooms were not child friendly and in some cases were not fit for purpose.\(^{17}\) Judges reported there were sometimes problems...
with seeing and hearing young witnesses clearly over the live link during trials, and while witnesses are intended only to see their questioners over the live link, there were numerous reports of witnesses seeing others, including defendants on their live link screen.

20. Intermediaries (independent communication specialists) are a special measure for vulnerable witnesses under s 29 YJCEA 1999 and provide vital support to enable young witnesses to access justice. They facilitate communication at the investigative interview and trial and contribute to planning how to obtain complete, coherent and accurate evidence. *Falling Short* concluded that young witnesses for whom intermediaries were appointed seemed more likely to make an informed choice about how to give evidence.

21. Disappointingly, the research found that registered intermediaries were both underused and under-resourced. At the start of 2018 there were 183 intermediaries and, after a two year gap in recruitment, only 32 new intermediaries had been added by November 2018. This contrasts with the Ministry of Justice’s 2014 analysis which concluded that up to 400 registered intermediaries were needed to meet demand. A projection was updated in 2017 to 470.

*Lack of leadership and accountability*

22. Court closures, reductions in court staff and Crown Prosecution Service budget cuts have put pressure on the CJS which has adversely impacted on young witnesses. Coupled with closure of most specialist young witness services (only two were identified in the study) and a shortage of registered intermediaries it is perhaps unsurprising that many of the aims set out in the vision statement are yet to be realised.

23. Against that backdrop, leadership and accountability are crucial. In the course of the study a senior civil servant, describing a vacuum in policy ownership to the researchers, said “implementation lives and dies on leadership” and another said “traditional forms for driving forward commitments have fallen by the wayside.” The researchers of *Falling Short* were not able to identify a single improvement to cases or practice involving young witnesses that emanated from systematic monitoring by HMCTS or the Ministry of Justice.

24. It is also telling that, despite a plethora of policies, some recent young witness issues have not featured on the agenda of the Criminal Justice Board, tasked with ensuring “each part of the CJS is held accountable for delivering reforms”.

**Recommendations and conclusions**

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18 Plotnikoff and Woolfson (2019), page 61
19 Plotnikoff and Woolfson (2019), page 62
20 Plotnikoff and Woolfson (2019), page 48
21 Plotnikoff and Woolfson (2019), page 16
22 Plotnikoff and Woolfson (2019), page 75
23 Plotnikoff and Woolfson (2019), page 76
24 Plotnikoff and Woolfson (2019), page 10
25. There are a number of recommendations from *Falling Short* we would invite the Committee to consider as part of their inquiry and raise in discussion with any witnesses from HMCTS and the Ministry of Justice. They include:

a. Access to justice: Expansion of the registered intermediary scheme should be addressed as part of the HMCTS Transformation programme.

b. Development of digital infrastructure: the ‘Common Platform’ should include the ability to flag young witness cases so that:
   i. their numbers can be counted and given the status of official statistics
   ii. the breakdown of timeliness data can include young witness cases (distinguishing s 28 and other young witness cases)
   iii. actual witness waiting times at court can be recorded systematically, taking account of witnesses’ arrival time at court and attendance on more than one day

c. Improvements to court facilities should include provision of:
   i. child-sized furniture
   ii. adjustable camera angles in live link rooms to obtain a clear view of the witness’s expressions on camera and accommodate a child in a child-size chair (rather than propping up the child on cushions to be at the right height for the camera)
   iii. ability to combine special measures to prevent the defendant’s view of the child on the live link
   iv. improved access to giving evidence from a non-court site.

d. Mapping provision of non-court remote live link sites should continue, to enable parts of the country with poor or no provision to be prioritised in development. Courts with poor waiting areas and live link rooms unsuitable for upgrading should be prioritised for remote link development and accommodation of s 28 technology.

e. A checklist developed to ensure the sound and image quality of s 28 recordings. This should also address ensuring a clear view of the witness on screen and allowing the use of close-ups when communication aids are used or when the witness uses gestures. A similar checklist should be developed for all courts using live link technology, with appropriate training for court staff.

26. In his foreword to *Falling Short*, Lord Thomas of Cwmgiedd, the former Lord Chief Justice, points out “proper mechanisms that ensure accountability for the delivery of the underlying policy” are necessary. We agree with him that little progress will be made unless each of the organisations with a role in delivering better access to justice for young witnesses and victims are “properly held to account for the shortcomings for which each is responsible”. The Justice Committee’s inquiry is an important opportunity for ensuring this much needed accountability.