

REPORT OF A JOINT THEMATIC REVIEW OF VICTIM AND WITNESS EXPERIENCES IN THE CRIMINAL JUSTICE SYSTEM

MAY 2009

HMCPSI
HMICA
HMIC

CONTRIBUTORS

HM Crown Prosecution Service Inspectorate
HM Inspectorate of Court Administration
HM Inspectorate of Constabulary

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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 A.

ACPO	Association of Chief Police Officers	PCMH	Plea and case management hearing
BCU	Basic (or in London, Borough) Command Unit	PSA	Public Service Agreement
CJS	Criminal justice system	VPS	Victim Personal Statement
CJSSS	Criminal Justice: Simple, Speedy, Summary	VWCDU	Victim and Witness Care Delivery Unit
CMS	Case management system (also known as Compass)	WAVES	Witness and Victim Experience Survey
CPS MIS	CPS management information system	WCO	Witness care officer
CPS	Crown Prosecution Service	WCU	Witness care unit
DCV	Direct Communication with Victims	WMS	Witness Management System
HMCPSP	Her Majesty's Crown Prosecution Service Inspectorate		
HMIC	Her Majesty's Inspectorate of Constabulary		
HMCS	Her Majesty's Courts Service		
HMICA	Her Majesty's Inspectorate of Court Administration		
LCJB	Local Criminal Justice Board		
LWAC	List of witnesses to attend court		
MG2	Special measures form completed by police officers		
MG3	Charging form completed by police and charging prosecutor		
MG6	Information on case file form completed by police		
MG11	Form used to record a witness's statement and personal details		
NWNJ	No Witness No Justice		
OCJR	Office for Criminal Justice Reform		

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INTRODUCTION

This is the report of the Chief Inspectors of Her Majesty's Inspectorate of Constabulary (HMIC), Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI) and Her Majesty's Inspectorate of Court Administration (HMICA) into the experiences of victims and witnesses in the criminal justice system (CJS). This work has been undertaken as part of the Criminal Justice Chief Inspectors' joint inspection programme for 2008-09.

The 2008-09 programme has been drawn up in accordance with the requirements of Part 4 of the Police and Justice Act 2006. This joint review reflects the commitment of the five criminal justice inspectorates (which also includes Her Majesty's Inspectorate of Probation and Her Majesty's Inspectorate of Prisons) to operate in an increasingly joined up way and demonstrates their ability to continue to develop the capacity to inspect end to end business processes that span two or more of the criminal justice agencies.

This joint thematic review has been undertaken in accordance with the Government's ten principles of inspection.¹

Background and context of the joint review

Improving victim and witness experiences is a key Government priority for the CJS. It underpins one element of the Public Service Agreement (PSA), published in June 2007, to increase victim and witness satisfaction with the CJS. It is also central to the Government's ambition to modernise and rebalance the system in favour of victims and the law abiding majority.

In support of the growing commitment to victims and witnesses, over recent years a range of centrally led initiatives have been introduced within the CJS to support victims and witnesses at the various stages of the criminal justice process. The aim of these is both to ensure that they are able to give their best evidence and also to ensure that more are willing to attend the trial to ensure that justice is done. Key developments include:

- **Special measures** - The Youth Justice and Criminal Evidence Act 1999 provides a range of special measures to enable vulnerable or intimidated witnesses in a criminal trial to give their best evidence, for example, allowing people to provide their evidence through a video link or to be assisted in giving their evidence by an intermediary.
- **Victim Personal Statements (VPSs)** - This scheme dates back to 2001 and provides an opportunity for victims to make a personal statement setting out the impact of a crime on them and their family.
- **Direct Communication with Victims (DCV) scheme** - Introduced in 2001 this commits the Crown Prosecution Service (CPS) to provide an explanation, normally by letter, to victims where a charge is dropped or substantially reduced or increased in gravity.
- **No Witness No Justice (NWNJ)** - Launched in 2003-04 this major initiative established a number of minimum requirements for the support of witnesses as their case progresses through the system and led to the introduction of witness care units (WCUs) responsible for

¹ Contained within The Government's Policy on Inspection of Public Services, Prime Minister's Office of Public Service Reform, July 2003.

providing support and information to victims and witnesses from the point of charge to the completion of a case. WCUs, which are jointly managed and staffed by the police and CPS, were in place in all areas of England and Wales by the end of 2005.

- **Prosecutors' Pledge** - A ten point pledge introduced in 2005 which details the level of service victims can expect from prosecutors.
- **Code of Practice for Victims of Crime** - This was introduced in 2006 setting out the minimum level of service to victims and imposing obligations on 11 organisations including the police, CPS, Her Majesty's Courts Service (HMCS), youth offending teams, probation service and prisons, including an enhanced level of service for victims deemed vulnerable and/or intimidated. This is referred to as the Victims' Code throughout the remainder of this report
- **Quality of Service Commitment** - From November 2006 all police forces have been required to meet new service standards including keeping victims informed of progress.
- **Witness Charter** - Designed to build on the Victims' Code this sets out core standards of service that all prosecution and defence witnesses should receive from criminal justice agencies. This is non-statutory and was piloted in the ten Beacon areas in 2007-08.² It is currently being implemented across England and Wales by all agencies with the exception of the police who were expected to adopt the Charter in 2009-10.

Details of these and other initiatives and developments are included in annex B.

In November 2007 the Home Secretary, Secretary of State for Justice and Attorney General published a Strategic Plan for 2008-11: Working Together to Cut Crime and Deliver Justice. This identified one of the major challenges facing the CJS as the need to improve the quality of service to victims and witnesses. Within the plan, the Government pledged to put victims at the heart of the CJS and for victims and all other witnesses to receive high standards of service.

PSA targets have since been revised to reflect the Government's revised strategy for the CJS. PSA 24, also known as the justice PSA, has the objective of delivering a more effective, transparent and responsive criminal justice system for victims and the public. One of its five specific commitments is to improve victim and witness satisfaction with the police and the CJS as a whole. At the time of this review the precise value of the targets in this respect had still to be defined.

Ensuring victims have the confidence to report a crime and that all witnesses have the confidence to appear as witnesses and give their best evidence is clearly central to a healthy and well functioning criminal justice system. In view of the significant investment in supporting victims and witnesses of crime in recent years and the Government's pledge to victims and witnesses, Criminal Justice Chief Inspectors considered it timely to review victim and witnesses experiences and assess progress in this respect. Early proposals were welcomed by key stakeholders who attended a consultation event in early 2008 and, following this, plans for this inspection were incorporated within the Chief Inspectors' Joint Business Plan for 2008-09.

2 The Beacon approach is a new way of working at Local Criminal Justice Board (LCJB) level which was introduced by the Office for Criminal Justice Reform (OCJR). It aims to assist LCJBs lead the reform programme set out by OCJR at a local level by providing a range of change management tools.

Aim and objectives of the thematic review

The overall aim of the review was to evaluate the effectiveness of services provided to victims and witnesses in maximising the likelihood of witnesses attending court and in improving the confidence of victims and witnesses in the CJS.

Specific objectives were to assess the extent to which:

- victims are supported and kept properly informed throughout the life of their case;
- the continued involvement and commitment of witnesses is ensured through early consideration of their needs and regular receipt of information throughout their case;
- victims and witnesses of the most serious crimes are supported by appropriate liaison arrangements;
- arrangements at court enable victims and witnesses to participate fully; and
- criminal justice agencies work together and co-operate to meet the expected standards of service for both victims and witnesses.

A copy of the indicators against which inspectors collected evidence is included in annex C. Where appropriate our assessment was made with reference to the relevant statutory and non-statutory standards and requirements. These include in particular the Victims' Code and the minimum requirements of the No Witness No Justice initiative. However in the case of the former our assessment was limited to the performance of the police, CPS, WCUs and HMCS and excluded assessment of other organisations with responsibilities under the Victims' Code, such as youth offending teams and the Criminal Injuries Compensation Authority.

It was not intended that the inspection should focus on any particular category of victims and witnesses nor of any particular crime. However it does include reference to the service provided to victims and witnesses of serious crime and the needs of, and support provided to, children and young people who are victims and witnesses. Where possible it included both prosecution and defence witnesses, although in practice obtaining views and data on the latter proved difficult. Police and expert and professional witnesses were excluded from the scope of this review.

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 ensuring, in accordance with the Courts Act 2003 (amended by the Police and Justice Act 2006), this review does not report on judicial decision-making or the exercise of judicial discretion.

Structure of the report

In order to present the findings in a coherent and logical way the report, as far as is possible, follows the various stages of victim and witness experiences as their case progresses through the system.

Chapter 1 provides an overview of how the service provided to victims and witnesses has changed in recent years. Chapter 2 assesses the support provided to victims and witnesses at the early stages, including how effectively victims are kept updated about the progress of their case, while chapter 3 goes on to consider the extent to which victim and witness needs are assessed and taken into account at the charging stage. WCUs are now well established in all areas and chapter 4 assesses the service they provide to victims and witnesses. Chapter 5 looks at the support provided during the trial itself, including courthouse facilities and waiting times.

Chapter 6 considers how well the service to victims and witnesses is managed at a local level and chapter 7 examines national strategy and governance arrangements.

Throughout the report a number of recommendations designed to address key concerns are identified, as well as aspects for improvement. The report also identifies a number of practices in fieldwork areas that appeared to be working well and which are worthy of consideration by other areas.

Acknowledgements

The Chief Inspectors and the review team are grateful for the co-operation, support and assistance of all those with whom they came into contact throughout the inspection, from preparation of material for the team's consideration to arrangements for the fieldwork and participation in the interviews and focus groups. Particular thanks go to the liaison officers in each of the criminal justice areas who were responsible for co-ordinating the above arrangements.

METHODOLOGY

The methodology used to obtain the evidence which supports the findings of this inspection involved a variety of approaches which are set out below.

Stakeholder engagement

During the scoping and preparatory stage meetings were held with representatives of a number of key stakeholders including the Association of Chief Police Officers (ACPO), the Association of Police Authorities, the joint police and CPS Victim and Witness Care Delivery Unit, HMCS, the probation service, Victim Support and the Office for Criminal Justice Reform (OCJR). Views expressed both helped shape the review and provided evidence for it. A number of these stakeholders were contacted again during the course of the review as issues arose.

In order to gain a defence perspective a short questionnaire was sent out to 75 defence practitioners in the areas being visited seeking views on the experiences of defence witnesses in the system. Comments were sought in relation to the information provided to defence witnesses; the facilities available for them, including access to special measures in appropriate cases; and their treatment at court. The response was disappointing - in total only four completed questionnaires were returned.

Letters requesting comments and views on the review were sent to a range of other stakeholders. These included Age Concern, Mind, the National Society for the Prevention of Cruelty to Children (NSPCC), Support After Murder and Manslaughter (SAMM), the Youth Justice Board and Voice UK. Meetings were held with Mind and Voice UK on their request and the helpful comments made contributed to the evidence for this inspection.

The pilot

The review team comprised inspectors drawn from HMIC, HMCPSI and HMICA. The methodology, in particular that used for the file sample and the approach to interviewing victims and witnesses, was piloted in the South Yorkshire criminal justice area during 4-8 August 2008. The methodology was then assessed and refined. No fundamental changes were made and the findings from the pilot have therefore been included in the overall evaluation.

The fieldwork

The main fieldwork took place in September 2008. The inspection team visited a further six criminal justice areas comprising a mix of urban and rural sites. These were London (Lambeth); Cambridgeshire; Merseyside; North Wales; Staffordshire and West Midlands. In each one witness care unit was visited and observations and interviews conducted in both a magistrates' court and the Crown Court.

Interviews

Interviews in each area were held with the judiciary and a range of police, CPS, HMCS and Local Criminal Justice Board (LCJB) representatives.

Police representatives included the local strategic lead for victims and witnesses, criminal justice unit manager (or similar) with responsibility for police staff in the WCU, performance manager, operational police managers, front line and neighbourhood and specialist officers.

CPS representatives included the local strategic lead for victims and witnesses; focus groups of prosecutors including charging lawyers; Crown Court caseworkers; and case progression officers.

WCU representatives included managers and focus groups of witness care officers.

Courts representatives included the senior resident judge, a district judge, a group of magistrates, area witness champion, witness liaison contact, listing officer, focus groups of legal advisors and ushers and the Witness Service co-ordinator and volunteers.

LCJB representatives were also interviewed where not covered above.

Observations

In each area we focused our observations on trials that were listed to be heard during the period of our visit, generally including five each in the Crown Court and magistrates' courts. Where possible we observed part of the trial and interviewed witnesses (see below). We also logged the outcomes of these trials. Key findings from these observations contributed to our findings in the body of this report. A summary of outcomes of the 70 observed trials is included in annex D.

Victim and witness interviews

With the helpful assistance of Witness Service volunteers we made contact with victims and witnesses at each of the courthouses we visited to seek their permission to be interviewed. In total 91 witnesses consented to be interviewed, 39 of whom had appeared in the Crown Court and 52 in the magistrates' courts. All but two of these were prosecution witnesses. As the Witness Service supports relatively few defence witnesses we were unable to arrange to interview defence witnesses. Findings from the witness interviews have contributed to our overall findings in the body of the report. A summary of key findings is included in annex E.

Lay inspectors

With the exception of the pilot area, a lay inspector assisted the inspection team in the court observations and victim and witness interviews. Lay inspectors are recruited by HMCPSI from a range of voluntary bodies and provide a valuable contribution from the public's perspective. They do this on a voluntary and unpaid basis. The Chief Inspectors and review team are very grateful for the valuable input of the lay inspectors involved in this review.

File sample

A total of 83 case files were examined. These consisted of recently finalised magistrates' courts and Crown Court cases drawn from the criminal justice areas visited and included both discontinued cases and ones that had been to trial. In all of them a prosecutor had authorised that the defendant should be charged. In order to track these cases as they progressed through the CJS where practicable the police, CPS and WCU files were all examined. In 49 of the 83 cases all three files were examined. In the remaining 34 some combination were examined and overall 58 police, 74 CPS and 62 WCU files were read. Data from the file examination is referred to at various parts of the report and set out in annex F.

The files were examined to consider the how effectively victim and witness needs had been identified and responded to throughout the criminal justice process, including whether their needs had been identified appropriately by the investigating officer; whether those needs had been considered by the prosecutor at the time of the charging decision; whether special measures applications were being made in a timely manner in appropriate cases; and whether victims and witnesses were being supported and kept informed throughout the criminal justice process.

We do not identify from which particular area our specific findings are drawn except where we highlight practices which, although not formally evaluated, appear to be working well for the areas in question. This is to assist other areas who may wish to follow up some of the practices identified.

Management and performance information

A range of management and performance information was considered by the team prior to the area visits. This included strategic planning documentation, performance data, operational policies and guidance materials, and notes of relevant meetings. During the fieldwork further supporting documents were made available to the inspection team.

Detailed performance information was drawn from the CPS's casework management (CMS), management information (MIS) and witness management (WMS) computer systems. This is referred to in various sections of the report.

Equality impact assessment

An initial equality impact assessment was undertaken in compliance with the statutory requirements of the Race Relations Act 2000, Disability Discrimination Act 1995 and Equality Act 2006. This also assessed on a non-statutory basis the equality impact in respect of sexual orientation, religion and belief, and age. After consideration of the proposed aims and objectives of the review and the methodology, inspectors concluded that there was no need to undertake a full equality impact assessment of the joint inspection. It was concluded that the equality aspects of the service to victims and witnesses were addressed appropriately in the proposed inspection. This conclusion was reviewed during the course of the pilot and no changes to the methodology considered necessary.

Other inspections

Where relevant findings from other recent inspections are drawn on.

SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS

Background to the review

Each year in England and Wales a large number of criminal trials take place involving hundreds of thousands of witnesses, a proportion of whom are also victims. In 2007 alone it was estimated that nearly 300,000 civilian witnesses were called to give evidence.

Improving the experiences of victims and witnesses is a key priority for the CJS and central to the Government's ambitions to modernise and rebalance the system in favour of victims and the law abiding majority. In recent years a range of centrally led initiatives have been introduced to support victims and witnesses and encourage them to attend court to ensure that justice is done. These include in particular No Witness No Justice, which involved the setting up of over 150 witness care units across England and Wales responsible for providing support and information to prosecution witnesses called by the CPS from the point of charge to completion of a case, and the introduction of a Victims' Code setting out the minimum level of service that should be provided to victims from the initial investigation onwards.

This review focused on the actual experiences of victims and witnesses as their cases progressed through the system. Its aim was to assess how well they were supported and kept informed at each stage of the process.

Overview

Prior to the setting up of WCUs pre-trial witness care was limited. Although responsibilities for victim and witness care at a local level were shared across the criminal justice agencies they were not necessarily co-ordinated and there was no local system wide management of victim and witness care on a day by day basis. Whilst police witness warning teams were responsible primarily for notifying witnesses that they were required to attend court and for the provision of basic information, it is accepted that the level of care provided at this time needed to be improved.

Considerable progress has been made since this time and the general level of service provided to prosecution witnesses has improved significantly. The setting up of dedicated WCUs has been central to this. These, together with a range of other initiatives to improve victim and witness care over recent years, have contributed to a cultural shift. There is now a far greater awareness and appreciation of the need to consider the needs of victims and witnesses at all stages of the criminal justice process.

Overall a great deal has been achieved, but there is still some way to go if victims and witnesses are really to feel they are placed at the heart of the system as the Government has pledged. In this report we set out our assessments of the experiences of victims and witnesses and identify where further improvements are needed.

Key findings

From initial contact through to the point of charge

The importance of victim contact and support from the initial point of contact and during the investigation has become a more visible priority for police personnel. This is being driven primarily by the Victims' Code and the 'citizen focus' agenda, a new way of policing in which the needs and expectations of local communities are reflected in police service.

The use of specialist support officers, such as family liaison officers, to support victims of the most serious crime is well established and in general they provide a very good level of support. The service provided to victims and witnesses by police front line officers, however, was variable.

Vulnerable and intimidated witnesses are entitled to be considered for special measures to help them give their best evidence and to an enhanced level of service from criminal justice agencies, so they need to be identified at the earliest opportunity. In practice they are not always identified at the early stages and officers do not always have sufficient understanding of special measures to explain these fully to victims and witnesses. This can result in raising false expectations if it subsequently transpires that a victim or witness is ineligible. Conversely it can lead to some not receiving the special measures they are eligible for, or such needs not being picked up until later in the process, resulting in late applications and uncertainty for victims and witnesses.

The Victim Personal Statement scheme dates back to 2001 and is intended to give a voice to victims by providing an opportunity for them to say how the crime has affected them. There is considerable variation in knowledge and understanding of the scheme on the part of police front line officers and not all victims are being given an opportunity to make a statement. The lack of a VPS is not always being picked up later by prosecution lawyers or WCU officers as it should. The quality of VPSs recorded by police officers examined varied.

In coming to a charging decision prosecutors have a duty to consider the needs of victims and witnesses and to identify those who are vulnerable or intimidated, as well as considering the credibility and reliability of the evidence. Whilst appropriate focus is given to considering the standard of evidence, the needs of victims and witnesses are often not assessed as fully as they should be. This was exacerbated in cases where witness statement forms did not include all the relevant considerations which otherwise would act as a prompt to the charging prosecutor.

Compliance with the Direct Communication with Victims scheme, whereby victims should be informed promptly and in writing of significant changes in their case, has improved markedly in the last year as has timeliness of communication, although there is still scope for improvement. The quality of letters to victims examined varied from excellent to poor and more work is needed to ensure a consistently high standard.

Support during the run up to and during the trial

There is no doubt that WCUs have improved the overall experience of victims and witnesses. The focus 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, is a great improvement on what had been in place before 2004. However there is some way to go for all WCUs to meet all of the minimum requirements set out for them and to do so on a consistent basis. Many are still struggling to ensure that a full needs assessment is carried out for all witnesses, a central requirement of No Witness No Justice. The requirement to provide hearing outcomes and sentencing updates to vulnerable and intimidated witnesses within one working day has consistently presented a major challenge, but was put in place to ensure victims and witnesses receive updates direct from the CJS and not from the media or through contact with the defendant.

Whilst all victims and witnesses are entitled to the same level of service irrespective of where they happen to live, in practice the level of service can vary significantly both between areas and between WCUs within the same area. This is due primarily to differing caseloads and resourcing levels.

Waiting times at court continue to be too long for a large proportion of witnesses. Inspectors saw some innovative practices aimed at reducing waiting times but more needs to be done. Once at court witnesses were generally kept well advised of progress in their case.

Compliance with the Prosecutors' Pledge (which sets out the level of service victims can expect from prosecutors) by CPS prosecutors was generally found to be good. Court staff that witnesses come into contact with were generally helpful and courteous and witnesses were well supported by the Witness Service.

Some witnesses have concerns about their safety. This is particularly when entering the courthouse and while in public parts of the building, where they can inadvertently come into contact with the defendant and their family and supporters. Much is already done to protect victims and witnesses from potential intimidation but further work is needed.

Strategic and management issues

Alongside NWNJ and the Victims' Code a range of other initiatives have been introduced to improve the service to victims and witnesses, both within individual agencies and jointly. There is a tendency to layer new commitments and initiatives on top of existing ones without any review and rationalisation. We found that many staff involved in supporting victims and witnesses were struggling to keep up with these and for victims and witnesses it can be difficult to find out what they are entitled to. There is an urgent need for rationalisation and simplification.

As a consequence of the wide range of initiatives introduced in recent years the victim and witness 'field' is a crowded one with many different players, all with various roles and responsibilities. This has led to a good deal of confusion on the part of staff responsible for delivery of service as to the roles of the various players and how they fit together, an aspect which needs to be addressed. This can also cause confusion for victims and witnesses, who can be contacted by many different people. Whilst each has a specific role and potentially valuable support to provide, victims and witnesses can on occasions feel overwhelmed. More thought needs to be given by the OCJR nationally and by criminal justice agencies at a local levels as to how contact with victims and witnesses by the various organisations can be better managed and co-ordinated.

The Criminal Justice System Strategic Plan for 2004-08 made a commitment that both victims and witnesses would have "a statutory right to high standards of service from criminal justice agencies spelt out in a Code of Practice". In practice the Victims' Code is statutory while the Witness Charter is not. This is leading to a two tier system which is not ideal.

In most areas visited structures to provide a joint and robust overview of victim and witness issues at local level were found to be lacking. This was compounded by a lack of area improvement plans for victims and witnesses and effective performance management. As a result areas are generally not being as proactive as they might be in developing the service for victims and witnesses.

Despite this inspectors found that those at the front line responsible for delivering the service to victims and witnesses were keen to offer a good service and took pride in what they did. Whilst the lack of a fully joined up approach frequently made their tasks more difficult, we found that staff were often working hard to manage despite this.

The most recent results from the Witness And Victims Experience Survey (WAVES) undertaken by OCJR showed that 81% of victims and witnesses interviewed (whose cases were completed in the first quarter of 2008-09) were “completely”, “very” or “fairly” satisfied with the contact they had had with the CJS. Whilst not directly comparable with survey results prior to the implementation of NWNJ and the Victims’ Code, earlier WAVES results for 2005-06 showed satisfaction levels of 75%.

Of the witnesses interviewed during this review 72 (85.7%) said that they would be prepared to give evidence again should they be a witness of crime in the future, but 14.3% that they would not. (It should be noted that this sample was drawn from witnesses who had decided to attend court in the first place).

This is a good result but still leaves a significant minority who would not be prepared to give evidence again. It is clear from the evidence collected during this review that the level of service provided to victims and witnesses varies. Inspectors believe that the unwillingness of some witnesses to give evidence again is indicative of their differing experiences and levels of service received. Despite the focus given to victims and witnesses in recent years this underlines the scope for further improvement.

Looking to the future

As to the future, the current CJS strategic and business plans refer to the need to embed standards. The findings of this review indicate that more emphasis should be put on this aspect. There is a tendency to assume that the various initiatives introduced are in place and working but, in practice, this is far from the case. Greater emphasis is needed across the board on consolidating and improving compliance with the wide range of commitments set out for victims and witnesses under the various initiatives. For instance, now WCUs have been established successfully more emphasis is needed on ensuring the efficiency and effectiveness of practices and systems with the aim of all WCUs meeting all the minimum requirements set out for them on a consistent basis.

Now central funding to support WCUs has ended and budgets continue to tighten, a key challenge for the future will be to make efficiency gains and ensure adequate resourcing levels to meet the commitments to victims and witnesses. This will be necessary if the Government’s pledge to put them at the heart of the system is to be met.

Recommendations and aspects for improvement

Inspectors have made 19 recommendations which identify steps necessary to address improvements in performance and service delivery which they consider merit the highest priority for the police, CPS and HMCS. They also identified 25 aspects for improvement which relate to other elements of the service provided to victims and witnesses that would benefit from improvement, but which do not have as high a priority. A number of recommendations are made to the joint Victim and Witness Care Delivery Unit. As the remit of the Unit does not extend to directing service levels in each of the 43 police forces in England and Wales, it will be necessary for these recommendations to be addressed in close liaison with ACPO in order to raise awareness and obtain the support of Chief Constables in implementation.

We recommend that:

- 1 Chief Constables should examine existing IT systems used within their force in order to identify cost effective solutions to provide for routine monitoring of compliance with the requirements of the Victims' Code. In implementing this recommendation, Chief Constables should also:
 - 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 mediums 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 2.26).

- 2 The joint Victim and Witness Care Delivery Unit should ensure that witness care units 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 2.32).

- 3 The Office for Criminal Justice Reform should review the guidance relating to the operation of the Victim Personal Statement Scheme in light of the introduction of the Victims' Code and re-launch the Scheme (paragraph 2.37).

- 4 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).

- 5 The Office for Criminal Justice Reform should:
 - 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).

- 6 CPS areas should:
 - 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).

- 7 The joint Victim and Witness Care Delivery Unit should take steps to ensure that witness care units (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).
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- 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).
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- 9 The joint Victim and Witness Care Delivery Unit should take steps to ensure that witness care units 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).
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- 10 The joint Victim and Witness Care Delivery Unit should ensure that witness care unit 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).
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- 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 4.74).
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- 12 The joint Victim and Witness Care Delivery Unit should ensure that:
- witness care units review their current 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 the police and CPS should ensure that WCU staff are aware of the counselling services available to support them in their role (paragraph 4.80).
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- 13 HMCS should ensure that:
- facilities are being properly risk assessed by ensuring that relevant staff have the ability and training to carry out that function; and
 - appropriate liaison 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 5.63).
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- 14 The joint Victim and Witness Care Delivery Unit should ensure that witness care units 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).
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- 15 Local Criminal Justice Boards 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).
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- 16 The joint Victim and Witness Care Delivery Unit should assure itself that No Witness No Justice resourcing levels are such that they enable areas to meet the requirements of them. As part of this it should undertake process mapping of witness care unit functions and provide guidance on resourcing levels and delivery models (paragraph 7.22).
-
- 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:
- 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).
-
- 18 In order to ensure that the data underpinning a Public Service Agreement 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).
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- 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).
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Aspects for improvement

- 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 2.13).

- 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 2.15).

- 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 2.37).

- 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 2.40).

- 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 2.45).

- 6 CPS areas should ensure the timeliness standards for dealing with full written advice files are met (paragraph 3.11).

- 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).

- 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).

- 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 needs of vulnerable and intimidated victims and witnesses are met (paragraph 3.20).

- 10 CPS areas should assure themselves that local arrangements are in place to ensure witness care units are made aware of the outcomes of special measures applications promptly (paragraph 3.21).

- 11 CPS areas should:
- ensure training for agents incorporates Direct Communication with Victims responsibilities (and also requirements of prosecutors under the Victims' Code and Prosecutors' Pledge); and,
 - agree with witness care units 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).
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- 12 The joint Victim and Witness Care Delivery Unit should ensure that witness care units 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).
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- 13 The joint Victim and Witness Care Delivery Unit should ensure that:
- Witness care unit local support contact/services directories are comprehensive, reflecting the needs of witnesses in their area, and kept up to date; and
 - Witness care unit officers are aware of the directories and are readily able to access them (paragraph 4.12).
-
- 14 The joint Victim and Witness Care Delivery Unit should ensure that witness care units:
- offer all witnesses the opportunity of a pre-trial familiarisation 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).
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- 15 The Office for Criminal Justice Reform, working in close liaison with ACPO, the CPS, HMCS and Witness Support, 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).
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- 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).
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- 17 The joint Victim and Witness Care Delivery Unit should ensure that appropriate monitoring is in place in witness care units to assure the quality of letters sent to victims and witnesses (paragraph 4.31).
-
- 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).
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19 HMCS should ensure that:

- HMCS areas work closely with other agencies to reduce witness waiting times and meet the standards set out in the Witness Charter; and
 - waiting times are recorded accurately to reflect the time witnesses are asked to attend court. (paragraph 5.28).
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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 5.36).

21 HMCS and CPS areas should ensure that:

- 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 5.59).
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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 5.61).

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 5.65).

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 5.68).

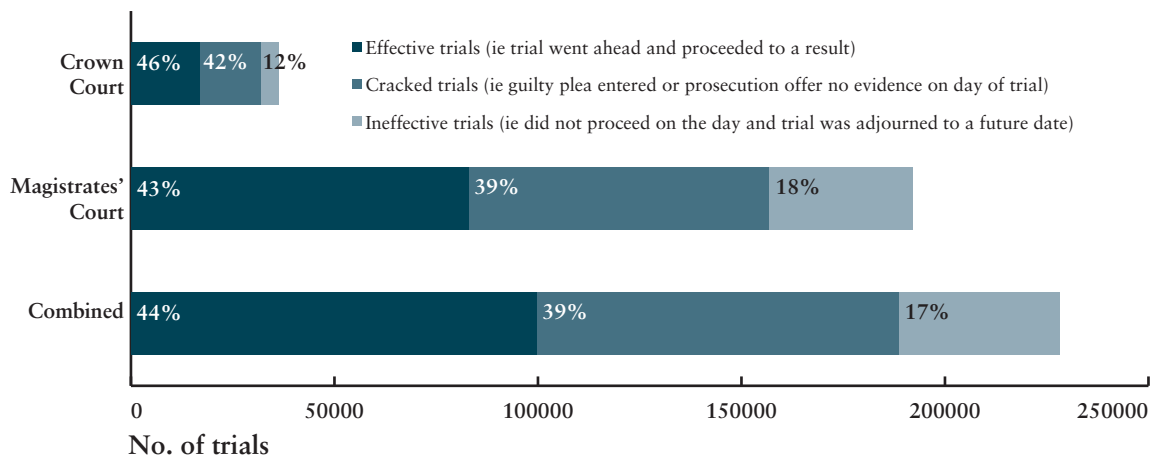
25 Local Criminal Justice Boards should review arrangements in their areas for contacting victims and witnesses to ensure they are properly managed and co-ordinated and avoid confusion and possible overload (paragraph 7.33).

1 AN OVERVIEW OF VICTIMS AND WITNESSES IN THE CRIMINAL JUSTICE SYSTEM

The scale of the issue - numbers of victims and witnesses

1.1 Each year in England and Wales a large number of criminal trials take place involving many hundreds of thousands of witnesses, a proportion of whom are also victims. In 2007-08 a total of 228,545 trials were listed to be heard in the Crown Court and magistrates’ courts.³ Actual witness figures are not collated at national level, but in 2007 alone it was estimated that nearly 300,000 (excluding police and expert and professional witnesses) were called to give evidence for either the prosecution or defence.⁴

Table 1: Numbers of criminal trials in England and Wales in 2007-08 and the proportion of these that are effective



Source: HMCS performance data

1.2 As may be seen from the table above, in practice less than half of all trials are effective in that they go ahead on the scheduled day and proceed to a result.

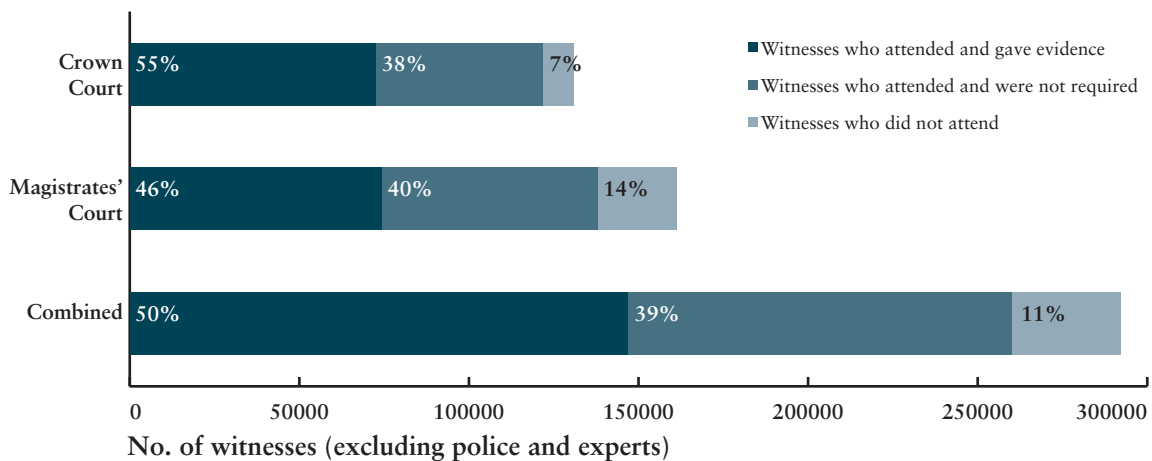
1.3 A large proportion of trials, nearly 40%, ‘crack’ on the day. This is where the case is ended due to a guilty plea being entered or the prosecution offering no evidence. In many of these cases witnesses will have attended but will not have been required to give evidence. Cracked trials generate a result which, if this is a guilty plea, can be positive for a prosecution witness in that justice is seen to be done. However if the case is ended for other reasons, for instance if an adjournment is refused and the prosecution therefore offers no evidence, this can be a negative experience for witnesses who have made the effort to attend. Cracked trials can also occur when prosecution witnesses (including civilian, police and expert witnesses) fail to attend or withdraw their evidence. In 2007-08, 10,702 trials (4.7% of total trials listed) cracked due to these reasons. Civilian witnesses can be frightened or reluctant to attend court. Many of the improvements in witness support during recent years have been designed to increase the likelihood of attendance.

³ Actual trial figures collated by HMCS.

⁴ HMCS witness figures based on six monthly witness monitoring surveys and HMCS statistics. HMCS acknowledge that these statistics contain an element of approximation and should be taken as estimates only.

- 1.4 A significant proportion of trials are classed as ineffective; this is where a trial did not proceed on the day but was adjourned to another date. In many instances effective 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. It is often more difficult to encourage witnesses to attend for a second or even a third or more times. The level of support and explanation provided can be a critical factor in a witness’s willingness to attend on a subsequent date. Ineffective trials may also arise as a result of the non-attendance of victims and witnesses. In 2007-08, 7,946 trials (3.5% of all trials) were ineffective due to the absence of a civilian prosecution or defence witness. This may arise because the witness was unwilling or unable to attend, for example due to illness, or there may have been a breakdown in communication resulting in the witness not receiving the request to attend. This excludes 2,198 trials (1.0% of all trials) that are ineffective due to the non-attendance of police or expert witnesses.
- 1.5 There are also a large number of vacated trials in the magistrates’ courts,⁵ over 50,000 in 2007-08. These are ones that for various reasons are taken out of the court trial lists before the date they were due be heard and are not included in the number of trials listed in paragraph 1.1. Vacated trials are generally a negative experience for witnesses, many of whom will have made special arrangements to attend court only for the date of the trial to be changed. This is less likely to be the case if witnesses have been notified in good time, but often trials are vacated very near to the date they were due on. Trials can be vacated because of the non-availability of a witness. In 2007-08, 11% of the vacated trials were due to a civilian witness not being able to attend. This excludes a further 10.4% of trials that are vacated due to a police witness being unable to attend.

Table 2: Estimated numbers of witnesses and the proportion required to give evidence in 2007



Source: HMCS performance data – see footnote 3 above

- 1.6 In terms of the impact of this on witnesses, it is estimated that just 50% gave evidence and 39% attended but did not give evidence. An estimated 11% did not attend.
- 1.7 Whilst many contend that it is an individual’s civic duty to give evidence in a criminal court when required, society is changing in many respects and this is not always so readily the case. Individuals can be less willing to come forward than in the past for a variety of reasons.

⁵ From HMCS performance data. Vacated trial figures for the Crown Court are not collated nationally.

It may be that the sense of civic responsibility is declining or that witnesses are more fearful of coming forward because of potential recriminations they consider they may face as a result. Giving evidence in a criminal case can be an intimidating experience for those with little experience of the CJS. It is easy for those involved in the system to forget this. Some employers can be reluctant to release staff to attend court and some, whose employers may not grant paid time off to attend, will not be fully reimbursed for loss of earnings. We are also living in a more mobile society where distances involved may be greater and many people have extensive travelling commitments, both at home and abroad, in connection with their employment.

Key changes for victims and witnesses

- 1.8 Prior to the setting up of WCUs pre-trial witness care was limited. Although responsibilities for victim and witness care at a local level were shared across the criminal justice agencies, they were not necessarily co-ordinated and there was no local system wide management of victim and witness care on a day by day basis. Whilst police witness warning teams were responsible primarily for notifying witnesses that they were required to attend court and for the provision of basic information, it is accepted that the level of care provided at this time was generally inadequate.
- 1.9 Commitments to victims and witnesses were stepped up in the Strategic Plan for Criminal Justice 2004-08 in which the Government pledged to put victims and witnesses at the forefront of the system. The first main development in the delivery of this pledge was a commitment to support people to attend court to give evidence through creating a nationwide system of WCUs. This was a central part of the NWNJ initiative designed to support witnesses and improve their attendance. It was envisaged that the WCUs would be run jointly by the police and CPS and would take responsibility, through a single point of contact in the Unit, for keeping victims and witnesses informed about their case, including details of progress towards any trial. This would apply for all victims and witnesses apart from victims of the most serious crimes where the single point of contact would remain police specialist officers. WCUs would also arrange tailored support to help witnesses attend court. The NWNJ initiative was supported by funding of £36 million over three years with WCUs expected to be up and running across England and Wales by the end of 2005. Sixteen minimum requirements are set out for NWNJ, most of which relate to the level of service to be provided by WCUs. These are set out in annex G.
- 1.10 The other main development was a commitment to give victims and witnesses a statutory right to receive minimum standards of service from criminal justice agencies, detailed in a Code of Practice. The Victims' Code was issued by the Home Secretary in 2006 under section 32 of the Domestic Violence, Crime and Victims Act 2004. However witnesses who are not victims had to wait until 2008-09 for a Charter, which in the event was not statutory. This was being implemented across England and Wales at the time of this review, following a pilot in 2007-08.
- 1.11 Alongside NWNJ and the Victims' Code a wide range of other measures have been introduced to improve the service to victims and witnesses in the various criminal justice agencies in recent years. These include some that have been implemented jointly such as the introduction of the various special measures set out in the Youth Justice and Criminal Evidence Act 1999; Victims Personal Statement scheme; piloting of the Witness Charter; introduction of Independent Domestic Violence Advocates; and more recently, Independent Sexual Violence Offences Advisers/Advocates to assist in the support of victims.

- 1.12 Other initiatives have been more specific to a single agency such as the introduction of new service standards in the Quality of Service Commitment for the police. In the CPS these have included the Prosecutors' Pledge; Direct Communication with Victims; Victim Focus Scheme; Pre Trial Interviews with Witnesses; and most recently Post Acquittal Meetings. At the same time HMCS has introduced area witness champion and court level witness liaison officer roles as part of their Every Witness Matters strategy to improve service to victims and witnesses. Details of these initiatives are included earlier in this report and in annexes A and B.
- 1.13 The Office for Criminal Justice Reform is cross-departmental, working on behalf of the Home Office, Ministry of Justice and Attorney General's Office. Its role is to support criminal justice agencies in working together to provide an improved service to the public. In relation to victims and witnesses it is responsible for developing the Government's requirements into a national strategy and plans and for supporting its delivery.
- 1.14 The national Victim and Witness Care Delivery Unit (VWCDU) is jointly staffed by the police and CPS, formed from the NWNJ implementation team, and with a remit to maintain a focus on the delivery and standards of service to victims and witnesses across the police and CPS. Its objectives include ensuring CPS compliance with all victim and witness commitments and supporting areas in the effective delivery of CPS and police commitments to victims and witnesses. One area visited which had been supported by the VWCDU had found the interventions constructive and helpful.

2 THE SERVICE PROVIDED TO VICTIMS AND WITNESSES AT THE EARLY STAGES BY THE POLICE

Identifying victim and witness needs during the initial investigation

- 2.1 Under the Victims' Code the police have a number of obligations in relation to crime reporting, assessment and victim support. These include:
- advising victims of whether or not there will be an investigation into the crime;
 - ensuring victims can access information about local support services together with service contact details;
 - taking all reasonable steps to identify vulnerable or intimidated victims (see paragraph 2.5 and annex H for definitions of these categories);
 - explaining the provision of special measures⁶ to vulnerable or intimidated victims who may be called as a witness in criminal proceedings;
 - keeping victims updated on the progress of ongoing investigations and their outcome, including whether or not action is being taken against any suspect;
 - notifying vulnerable or intimidated victims, subject to certain criteria being met, whenever a suspect is released on bail, reasons for bail, any bail conditions and any alteration to bail thereafter, including (where relevant) the date of any court hearing; and
 - assigning family liaison officers to relatives in cases where a victim has died as a result of criminal, or suspected criminal, conduct.
- 2.2 The Witness Charter complements the Victims' Code and sets out core standards of service that all prosecution and defence witnesses should receive from the police and other criminal justice agencies. This is non-statutory and was piloted in the ten Beacon areas in 2007-08. It is currently being implemented across England and Wales by all agencies with the exception of the police who were expected to adopt the Charter in 2009-10.
- 2.3 An important police role in the early stages of an investigation is to take an evidential statement from the victim and any witnesses and to obtain all relevant information to ensure their needs are identified promptly. Witness statements, including those of victims, together with full personal details and a record of any assistance or special requirements needed to assist them attend court are recorded on a witness statement form (MG11) used throughout England and Wales. Statements are recorded on the front and full witness details on the reverse of the form. Recording of details on the reverse of the MG11 is also relevant when taking a video recorded statement. The evidential statement needs to be sufficiently detailed to reflect the account of the witness fully and accurately and to ensure that the CPS has sufficient information to consider the evidence properly. This also protects a witness.
- 2.4 The standard of completion of these forms across the inspection sites was found to be variable with, in some cases, basic information such as contact details having been omitted. For example, in the file sample of 70 cases examined by inspectors where full witness details should have been recorded on the reverse side of the MG11 they were completed in only 54 (77.1%). This was borne out in interviews with WCU officers who said that they do not always have all the

⁶ Special measures are designed to enable vulnerable and intimidated witnesses give their best evidence and include the use of video recorded evidence in chief, a live video link which enables a witness to give evidence from outside the courtroom, screens around the witness box and evidence given in private. A full list and explanation of special measures is given in paragraph 3.13.

necessary witness information provided to them. The MG11 forms, in the main, provide the only information that WCUs receive to allow them to make contact with victims and witnesses. Lack of contact details makes their role particularly difficult as they have to resort to interrogating police crime recording or other systems to access telephone numbers and e-mail addresses (see recommendation at paragraph 2.26).

Merseyside Police have been proactive in regard to witness statement form (MG11) completion and have set a force target of 95% fully completed forms on first submission, which is being monitored through a formal checking process within the Criminal Justice Units. The force's own performance monitoring data shows the two Liverpool Basic Command Units combined have demonstrated an improvement from 68% in April 2008 to 94% in September 2008 when the inspection team visited. This was further supported by our file sample which showed 100% of MG11 forms in Merseyside were completed fully. This means that WCU officers have access to considerably improved levels of information which, in turn, has led to more streamlined victim contact. The overall quality of victim information provided has also improved, thus facilitating a more professional process and victims are also aware that their needs have been recorded.

Early identification of vulnerable and/or intimidated victims and witnesses

- 2.5 Vulnerable victims and witnesses are defined as children and young people under 17 years of age and those suffering from a physical or mental incapacity. Intimidated witnesses are defined as those in fear or distress about giving evidence, which may reduce the quality of that evidence, and victims of sexual offences. Further details of these definitions and how they are assessed are contained in annex H.
- 2.6 Vulnerable and intimidated victims are entitled to an enhanced level of service under the Victims' Code and, more recently, vulnerable and intimidated witnesses can expect similar levels of service under the Witness Charter. It is vital therefore that police officers identify vulnerable or intimidated victims and witnesses at the earliest opportunity and that this information is then passed to the CPS and other relevant agencies. The enhanced service includes, for example, speedier notification of the results and outcomes of court hearings in their case. Vulnerable and intimidated victims and witnesses are also eligible for special measures. These are the various measures that a court can order to assist such victims and witnesses to give their best evidence in court including, for instance, giving evidence from outside the courtroom via live video links, pre-recorded video evidence, or screens around the witness box. Special measures are considered in detail in chapter 3.
- 2.7 Information as to whether a victim or witness is vulnerable or intimidated and/or has any other special needs (for example the services of an interpreter) should be recorded by police officers on the MG11. Although some victims and witnesses will not always want to disclose relevant personal information to the police, the police must take all reasonable steps to identify vulnerable or intimidated victims and witnesses, as full and accurate recording of such information is important in highlighting to the prosecutor and later to the WCU officer that a person has special requirements that need to be addressed.

- 2.8 During interviews across the inspection sites it was found that police officers were not always sufficiently aware of the statutory definitions of vulnerable or intimidated witnesses and the distinction between them. Front line officers in particular indicated they tended to use common sense to identify possible vulnerability and intimidation issues. This has the potential to raise false expectations on the part of some victims and witnesses if it subsequently transpires that they are, in fact, ineligible. Conversely it can also lead to other victims and witnesses either not receiving special measures for which they are eligible, or such needs not being identified until further on in the process, resulting in late applications being made.
- 2.9 This lack of awareness was also evidenced in the file examination where, during the early investigation, in 15 cases involving a vulnerable victim or witness only nine (60%) were correctly identified and in 33 cases involving an intimidated victim or witness where only 19 (57.6%) were correctly identified. Whilst in some cases a victim or witness may only become intimidated in accordance with the statutory definition as the trial approaches, overall evidence suggests the need for improved awareness in this area.

Case study: In one case a witness had been described by the police as having “mild learning difficulties”. When the witness attended at court on the day of trial it became very evident that those difficulties were far more severe and it was a case where appropriate special measures in the form of an intermediary would most likely have facilitated better communication with this witness. This was not identified by the police at the initial interview, which was the only face to face interaction with the witness, nor was it subsequently identified by the charging lawyer or WCU officer.

Early identification of where special measures may be appropriate

- 2.10 As well as ensuring the accurate identification of vulnerable or intimidated victims and witnesses, it is important that police officers understand how the various special measures can be used in practice. It should not be assumed that an individual who is eligible will automatically want this service and this is acknowledged in the Victims’ Code and the Witness Charter. Officers must, therefore, be sufficiently knowledgeable to explain the special measures provisions to victims and witnesses and any views expressed should be recorded.
- 2.11 In the file sample the victim’s or witness’s views regarding special measures were recorded in 16 of the 49 cases (32.7%) in which it would have been appropriate to do so. Whilst discussion may have taken place in the remaining cases, this is not recorded.
- 2.12 Interviews with front line officers indicated that they tended to associate special measures with the most serious crimes, usually investigated by specialist officers. In one focus group of front line officers some did not know about special measures at all. Even where police personnel were reasonably knowledgeable they were not always sure of exactly how special measures worked in practice, for example whether a witness could or could not be seen by the defendant when giving evidence via a live video link. If witnesses are given incorrect information, however inadvertently, it can cause difficulties at the time of trial (see paragraph 5.37). It can, however, be difficult for police officers to explain special measures to victims and witnesses when they have not seen them in operation and police training could usefully incorporate an opportunity to see them being used.

New police officers in Liverpool spend a day's attachment with the Witness Service at Liverpool Magistrates' Courts when court processes and, in particular, special measures are covered in some detail.

In addition ACPO has recently distributed a pocket book guide on vulnerable and intimidated witnesses to all police forces.

- 2.13 The decision to apply for special measures is made by the CPS prosecutor while the decision to order these measures is made by the court. However some decisions will also have to be made by police officers before an application can be made to the court (such as the whether to take a video recorded statement or to use an intermediary) and this can raise expectations on the part of victims and witnesses that special measures will automatically be made available. It is important, therefore, that expectations are properly managed and that the process is clearly explained. Inspectors found some instances where witnesses had been given to understand that special measures would be available and did not appreciate that this was subject to a successful application being made.

ASPECT FOR IMPROVEMENT

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.

- 2.14 Where a witness is vulnerable or intimidated and the police consider that special measures should be applied for an additional special measures form (MG2) should be completed. This sets out what measures are required and how these will assist in allowing the person give their best evidence. It also provides the prosecutor with the necessary information on which to make an application to the court. Inspectors received evidence from prosecutors that these forms were frequently not provided or not completed fully. This was borne out in the file sample - there were 55 cases where it would have been appropriate for charging prosecutors to have identified vulnerable and/or intimidated victims or witnesses and they did so in 30 of these. The MG2 had been completed by police in just 18 of these 30 (60%). Poorly completed forms which lack the level and detail of information (including an indication of any support evidence available) necessary to prepare an application can result in special measures applications being delayed or, at the worst refused, by the court.

Case study: An incident had occurred in a hospital mental health unit which involved potentially vulnerable witnesses. Special measures forms were requested from the police by the CPS some three months before the eventual trial date, but none was received. A late application for special measures was then made by the CPS only a week before the trial, based on what little information was available. The application was refused by the court due to insufficient information. Further information and supporting evidence was requested from the police but was not received in sufficient time to renew the application before the day of trial. The application was renewed with additional supporting evidence on the trial date and was granted. Witnesses had attended not knowing whether special measures would be available. The fact that the application had to be made on the day led to a delay in the start of the trial, further adding to their anxieties.

- 2.15 When special measures are not identified or a form is not completed early in the case it impacts on the timeliness of the application. Applications should be made within 14 days of a defendant pleading not guilty in the magistrates' courts and within 28 days of a defendant first appearing in the youth court or a defendant being committed or the case being transferred to the Crown Court. Police officers did not always appreciate the importance of initiating this form at the earliest opportunity and should not wait until a not guilty plea is entered.

ASPECT FOR IMPROVEMENT

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.

The practicalities of providing video evidence

- 2.16 If an investigator believes that a witness is eligible for special measures and video evidence will result in the best evidence available, they should give consideration at an early stage on a case by case basis to video recording the interview with a vulnerable or intimidated witness in order that this is available as evidence in chief if required.
- 2.17 These video recorded interviews can only be carried out by police officers who have been trained in the investigative interviewing of children and vulnerable or intimidated adult witnesses. In four of the seven inspection sites the availability of suitably trained officers was identified as an issue, which can result in delays in the early stages of an investigation. Steps were being taken in two of these areas to alleviate this situation.
- 2.18 The use of video interviews appears to be more prevalent in serious cases than in high volume crime cases. Although there are vulnerable and intimidated witnesses who have a right to give their statement at a video interview the police should discuss with each witness whether they do in fact wish to exercise this right, or whether they may prefer to give a written statement. The important issue is that the victim or witness understands fully how this system operates including the fact that they may be visible on screen to all parties in the proceedings and, in the case of pre-recorded video evidence, likely to be subject to cross-examination.
- 2.19 To ensure that video interviews result in the witness giving their best evidence care needs to be taken to make sure they are clear, of good quality and edited properly to make sure they are focused and not too long. We received some adverse comments from the judiciary and prosecutors in relation to the quality of the video interviews, to the effect that they were on occasions too long. The preamble and other formalities in particular, whilst necessary, can substantially lengthen the recording and distract attention from the important aspect of the evidence.

Keeping victims informed of progress during the initial investigation

- 2.20 Under the Victims' Code police forces must notify the victim on at least a monthly basis of progress in cases being actively investigated up until the point of the closure of the investigation. They must also notify victims of key events in their case such as the arrest, bail, charge, summons, remand or other disposal of the case.⁷ Such communication must take place within one working day for vulnerable and intimidated victims and five working days for other victims.
- 2.21 Interviews with police personnel demonstrated varying levels of awareness of the Victims' Code, depending on individual roles and the likely level of contact with victims of crime. Staff trained in specialisms such as family liaison, sexual offences, domestic violence, hate crime and child abuse, consistently demonstrated the most comprehensive understanding of the requirements. This is to be expected as the nature of specialist investigations is such that they will tend to involve greater levels of victim contact. Although non-specialist officers demonstrated an awareness of the Victims' Code they were not always clear about its detail, such as timescales for completion of notifications and updates to victims. Overall, however, there was consensus amongst interviewees that victim contact is now a much more visible priority and that the new citizen focus agenda⁸ was helping to drive improvement across the service as a whole. This view is supported in part by national data collated by the Police and Crime Standards Directorate of the Home Office which indicates that, at the time of the review, levels of satisfaction with progress updates provided by the police were showing ongoing improvement (from 60.1% in 2004-05 to 63.3% in 2006-07 and 65.2% in 2007-08). However, the data also shows that levels of satisfaction with progress updates remain lower than that for other aspects, such as satisfaction with making contact with police and action taken by police.
- 2.22 Police personnel shift patterns were often highlighted as causing the greatest difficulty in ensuring that victims are updated within required timescales, particularly, for example where staff are on nightshift. As a result some of the forces visited have begun to explore different mechanisms for maintaining contact with victims. In Peterborough, for example, arrangements can be made in appropriate cases for victims to be updated via email. Other forces have introduced support roles which, although known by a variety of job titles, commonly act as a single point of contact to provide advice and answer any queries victims may have in relation to their case in the event that the investigating officer is unavailable. In some instances these members of staff are specifically tasked with making contact with victims in the early stages of an investigation to confirm that they are aware of the investigating officer's contact details and have been provided with initial information about their case, such as the crime reference number, thereby allowing prompt follow up. Whilst these support arrangements are improving lines of communication between the police and victims, adding a further point of contact was found in some cases to cause confusion for victims (see also paragraphs 7.30-7.33).
- 2.23 Reported crime is recorded on a force's crime recording system. In most instances police contact with victims thereafter should be logged onto this system. Monitoring of compliance against the Victims' Code across the seven inspection sites varied greatly from ad hoc local arrangements at BCU level, to formal processes at force level.

7 Other disposals include cautions, reprimands, final warnings and penalty notices for disorder.

8 Citizen focused policing is a new way of policing in which the needs and expectations of individuals and local communities are always reflected in police decision-making and service.

In Merseyside compliance with the Victims' Code is tested by dip sampling cases at all levels in the organisation by supervisory staff, up to and including Detective Chief Inspectors, who routinely select 200 crimes a month. Their findings are fed into a central performance unit which analyses the data and in turn publishes any lessons learned from the analysis. If this sampling identifies routine failures to adhere to the Victims' Code an escalation process is invoked. In addition the Chief Officers' Group and BCU Command Teams also dip sample a small number of cases each month and contact victims directly to learn first hand their views on the service they have received. The results of these calls, both positive and negative, are fed back personally to staff concerned.

- 2.24 The above practice has heightened awareness of the importance of victim contact at all levels of the organisation. However this type of structured process was found to be the exception, with monitoring generally taking place through routine dip sampling by immediate supervisors. This means that overall most forces visited are unable to assess accurately the extent to which they are complying with the statutory Victims' Code.
- 2.25 Where crime is investigated by a specialist unit (such as child abuse) information may be recorded on secure stand alone IT system with restricted access. Information in relation to victim updates in these instances is not necessarily replicated on the force crime recording system. Security issues mean that monitoring may be restricted solely to the force crime recording system, as a result of which compliance by specialist units cannot be readily monitored.
- 2.26 Although some police IT recording systems were able to electronically prompt officers as to outstanding victim updates required under the Victims' Code none had the capacity to prompt compliance with the full range of requirements. Even where prompts were built into the electronic system the timescales for these were not always fully compatible with those set out in the Victims' Code. Such prompts also relied on other data entries such as arrest or bail details being recorded in a timely manner.

RECOMMENDATION 1

Chief Constables should examine existing IT systems used within their force in order to identify cost effective solutions to provide for routine monitoring of compliance with the requirements of the Victims' Code. In implementing this recommendation, Chief Constables should also:

- 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 mediums 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.
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Specialist liaison arrangements

2.27 Family liaison officers (FLOs) are appointed in homicide investigations and fatal road traffic collisions to provide support to the family of the deceased as it is of paramount importance that families are treated professionally, with respect, and that their needs are considered.

2.28 The four main objectives of family liaison are to:

- provide care, support and information in a sensitive and compassionate manner to the family who are themselves victims of crime;
- ensure that family members are given information about support agencies and that referrals are made to Victim Support and other agencies in accordance with the family's wishes;
- gather evidence and information from the family in a manner which contributes to the investigation and preserves its integrity; and
- secure the confidence and trust of the family thereby enhancing their contribution to the investigation.⁹

2.29 There are a number of other specialist roles as follows:

- Specially trained officers (STOs) are appointed in serious sexual offence investigations to carry out victim focused evidence gathering and ensure that victims receive appropriate care to meet their needs. They have a number of responsibilities which directly relate to the victim and include responding to the initial report of the offence; arranging and attending the forensic medical examination; securing exhibits and samples from the victim; conducting the interviews with victim; and, in most cases, maintain contact with the victim on behalf of the investigation officers in order to provide updates on the investigation.¹⁰
- Child abuse investigation unit officers (CAIU officers) take primary responsibility for investigating child abuse cases.
- Hate crime officers (HCOs) are appointed in some forces to provide information and facilitate support to victims and investigate any crimes where a person's prejudice against an identifiable group of people is a factor in their choice of victim. This includes racist, homophobic, transphobic, faith related, sectarian or disability related crime.
- Domestic abuse liaison officers (DALOs) are appointed in domestic abuse investigations to provide advice and information to victims about support agencies. They also carry out risk assessments and liaise with other agencies. The role and responsibilities, however, vary from force to force and the role is developing into an investigative one.

2.30 The use of specialist officers in the areas visited was found to be well established. There were, however, a number of issues identified in relation to workload capacity. In one force in particular concerns were identified regarding the volume of cases that some specialist officers are allocated. These related mainly to FLOs and STOs. Officers interviewed indicated that, while sufficient time is allowed in the early stages of an investigation to maintain contact with victims and their families, as a case progresses it can become increasingly difficult to maintain appropriate levels of contact due to competing demands on their time.

⁹ Source: ACPO Family Liaison Strategy.

¹⁰ NPIA (National Policing Improvement Agency) Guidance on Investigating Serious Sexual Offences - currently being reviewed.

- 2.31 In addition, in the most serious cases involving FLOs, STOs and CAIUs, WCUs do not take responsibility for victim and witness contact. The review found that there were no protocols in place regarding victim and witness care in serious cases and in the majority of such cases responsibilities for victim contact is agreed on a case by case basis by negotiation. There is the potential for victims and witnesses to fall into a gap between the WCU and police whereby each assumes the other is providing the required updates and information. This can result in victims and witnesses not receiving the information they should.

Case study: In a serious case observed the child victims and their parents involved were dealt with by a CAIU officer who kept them reasonably well informed during the long run up to the trial. The WCU assumed that the relevant information would be provided by the CAIU officer, who was noted as dealing with the case, to all witnesses involved in the case. As a result one adult witness interviewed found out about the date of the trial from the victims' families. The witness had to contact the police direct to try to obtain written confirmation of her need to attend to show her employer, to ensure she could attend the trial. Using her initiative this witness found out about the Xhibit system, a computer system in the Crown Court which tracks the progress of a case. Because of her determination she duly gave evidence. However the breakdown in process meant that she did not receive the service she should have.

- 2.32 Under the Victims' Code the WCU has specific responsibilities in relation to providing support to victims (including the provision of information) from the point of charge to case completion. At the same time there are clearly benefits in specialist officers continuing to remain in contact with victims beyond the point of charge and, depending on the nature of the case, there may also be post-charge functions that require completion by police officers. It is important, therefore, that where responsibilities are shared between the WCU and police officers there is clarity about who is responsible for contacting victims at each stage and the information with which they should be provided. This is to ensure that all victims receive an equitable service. For example this review found evidence of gaps in relation to completion of needs assessments and information such as the Witness in Court leaflet not being supplied where police offices retained primary responsibility for contact.

RECOMMENDATION 2

The joint Victim and Witness Care Delivery Unit should ensure that witness care units 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.

Opportunities for victims to make a Victim Personal Statement

- 2.33 Victim Personal Statements (VPSs) were introduced in 2001 and are intended to give a voice to victims of crime. They provide an opportunity for victims to tell the criminal justice agencies and services dealing with their case how the crime has affected them - physically, emotionally, psychologically, financially or in any other way. Victims should be given the opportunity to make a VPS when a witness statement is taken by the police. They are then able to provide a further statement at a later date, describing any longer-term effects the crime

has subsequently had on them. In the file sample 31 cases were examined where a VPS should have been provided to the charging prosecutor. They were provided in only 18 of these (58.1%). In a further 12 a VPS would not have been expected as the victim had chosen not to make a statement and in 15 there was insufficient information recorded to assess the position.

- 2.34 Considerable variation was found in the level of knowledge and understanding on the part of police personnel in relation to the VPS Scheme and the taking and recording of a personal statement. During interviews specialist officers tended to demonstrate more detailed and consistent understanding than those in non-specialist roles. There was also some evidence of a lack of awareness of the purpose and value of these statements. This was reflected in the quality of the VPSs looked at during examination of police files, but was also compounded by varying recording practices across the inspection sites. In some instances variations were also found across individual BCUs within the same force.
- 2.35 Guidance published when the scheme was introduced¹¹ states clearly that the VPS should be recorded as an addition to the witness statement form, separated from the evidential section of the form. However in some cases the VPS was threaded through the main evidential statement; in some it was added to the end of the witness statement without any break in the main text; and in others it was recorded on a separate witness statement form. Whilst it is a victim's decision whether or not to make a VPS and the content will be determined by what they wish to say, in order to assist in getting the best from the process the guidance also sets out a number of prompts for practitioners to use when taking a personal statement. Whilst there were some good examples of comprehensive VPSs having been obtained many consisted of only two or three lines, some of which were too limited to be of value.
- 2.36 The national template witness statement form (MG11) is often adapted locally following consultation between criminal justice partners. Whilst all MG11s examined included a statement which required confirmation that the VPS Scheme had been explained to the victim and also whether they had been given a copy of the leaflet describing the Scheme, the relevant sections were not always completed. As a result it was not always apparent to the prosecutor whether the victim had declined to make a statement or had not been offered the opportunity to make one. This has the potential to delay proceedings whilst prosecutors contact officers to clarify the situation or, indeed, request that they contact the victim to confirm whether they do indeed wish to supply a VPS.

Case study: Inspectors were told of one serious case involving an attack on a person using acid which was adjourned four times whilst a Victim Personal Statement was requested by the judge to assist in sentencing. This was never received and the judge eventually sentenced without the benefit of a statement.

- 2.37 A number of the prompts identified within the guidance for practitioners have been superseded by the Victims' Code, for example special communications needs and details about vulnerability. This, combined with the incomplete understanding of the scheme by police personnel, variations in recording practice and wide differences in VPS quality, would suggest it would be timely for the guidance to be reviewed and the scheme re-launched. Work is underway on this.

¹¹ The Victim Personal Statement Scheme: Guidance note for practitioners or those operating the Scheme, Home Office, 2001.

RECOMMENDATION 3

The Office for Criminal Justice Reform should review the guidance relating to the operation of the Victim Personal Statement Scheme in light of the introduction of the Victims' Code and re-launch the Scheme.

ASPECT FOR IMPROVEMENT

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.

Responding to the differing needs of victims

- 2.38 It is essential that the diverse needs of victims and witnesses are identified and considered at the earliest possible stage so that the appropriate support can be offered during the investigation. The police should also ensure that any language difficulties, cultural issues, physical disabilities or learning difficulties are identified as far as practicable at the pre-charge advice stage (see chapter 3) and included within background information submitted to the CPS when a charge is being sought.
- 2.39 Police forces have access to a range of services to assist victims and witnesses during the criminal justice process. These can be practical services to assist in the investigation, such as the use of interpreters or signers to aid communication, or support services such as Victim Support, Rape Crisis and social care services, to provide specialist professional support. Whilst evidence was found of varying support groups and agencies in use across the areas visited, there was inconsistency within individual forces regarding who officers contacted in some instances. Although referral to support agencies will be determined by victim choice, and will also be dependent on the local availability of services, it is important that police personnel are aware of what is available locally to ensure that victims receive sufficient information to make an informed choice about services and how to access them.
- 2.40 The use of family liaison officers and other specialists (see paragraphs 2.27-2.30), was found to be well embedded in the areas visited. These officers, due to their specialist roles, tended to have close links with local support agencies and proved very knowledgeable about the range of services provided. Non-specialist officers were knowledgeable about services accessed on a frequent basis, such as interpreters for evidential language issues or social services to act as an 'appropriate adult'. However they demonstrated much more limited understanding of other services, for example those to support victims and witnesses with mental health and learning disabilities. In addition, in the majority of forces visited a support services contact directory was held centrally but not all staff were aware of or used this facility.

ASPECT FOR IMPROVEMENT

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.

Referrals to Victim Support

- 2.41 Victim Support is the national charity which provides confidential assistance and support to victims of crime in England and Wales to help them deal with the crime they have experienced.
- 2.42 Subject to certain exceptions,¹² the police must clearly explain to the victim that their details will be passed to Victim Support unless they say otherwise. Details of sexual offence or domestic violence victims, or relatives of homicide victims, should only be referred where victims or relatives have given explicit consent. Relevant details need to be passed to Victim Support no later than two working days after an allegation of criminal conduct. In the majority of forces victim and witness details (other than in the restricted categories) were automatically referred unless the victim specifically states otherwise. This was done electronically on a daily basis.
- 2.43 In order to ensure that victims' wishes are acceded to it is essential that the relevant field in the force's crime recording system is correctly completed in the first instance. In some cases forces had identified difficulties with completion, primarily in relation to lower than anticipated levels of referral (as opposed to inappropriate referral i.e. contrary to a victim's wish not to be referred). All forces, however, provided a facility whereby should a victim subsequently change their mind and wish to be referred to Victim Support at a later date this could be undertaken by the WCU re-offering this. Despite this safeguard it is important that victims are provided with the opportunity to access relevant support services as early as possible.
- 2.44 Whilst work is being undertaken to improve the level of referrals, in three areas visited Victim Support were concerned that they were not receiving the level of referrals they should. In one of these figures provided indicated only 30% of potential referrals were being made; this was of such concern that the police had placed a police officer in the Victim Support Unit to provide access to police systems and ensure the appropriate referrals were made. At this point in the process for victims of all but the most serious crime (who are supported by specialist police officers), Victim Support is the main provider of advice and support. Therefore it is critical that referrals are made.
- 2.45 Although police personnel are aware of Victim Support and referral procedures their knowledge of what support can be provided is limited, making it difficult for them to advise victims fully of the benefits of referral. It was also evident that police personnel were not clear about the different functions and services provided by Victim Support, WCUs and the Witness Service. This issue is dealt with further in paragraphs 7.30-7.33.

ASPECT FOR IMPROVEMENT

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.

¹² Exceptions are details of victims of the theft of and theft from a motor vehicle, minor criminal damage and tampering with motor vehicles. However, aggravating factors such as repeat victimisation or victims of hate crimes require a referral.

3 THE WORK OF THE CPS IN ASSESSING AND RESPONDING TO THE NEEDS OF VICTIMS AND WITNESSES AT THE CHARGE STAGE

Information provided by the police at the charging stage

- 3.1 The CPS is responsible for the decision to charge, and specifying the charge to be brought, in the more serious cases. The earliest opportunity the CPS has to consider victim and witness issues is when the police request either an early consultation for advice, which is more common in serious or complex cases, or when the police bring a case to the CPS for a charging decision. If it is decided that there should be a prosecution the CPS prosecutor gives authority to the police to charge the defendant with a certain offence or offences, following which the defendant will be required to attend court. The prosecutor should consider at the outset not only issues which might affect the weight of the evidence but also whether any of the witnesses have specific needs such as those that may be addressed by the use of special measures (see paragraph 3.13).
- 3.2 Examination of both police and CPS files showed marked differences in terms of the quality and content of files that come into the CPS for advice or authority to charge. For the prosecutor who makes the charging decision the key sources of information are the witness statement (MG11), confidential information (MG6), and special measures (MG2) forms and the Victim Personal Statements as well as the police section of the charging form (MG3). Shortcomings found in the extent and quality of completion of these forms are set out in the previous chapter. These can impact on the quality of the information that the charging prosecutor receives to make a decision on the case and about victim and witness issues.
- 3.3 Advice and decisions in relation to charging are recorded on an MG3. The police complete the first part of this form to request the CPS prosecutor to consider a case. This summarises the evidence and also gives the prosecutor relevant information about victims and witnesses. We found that these forms better reflect the relevant issues when the officer who has personally dealt with the victims and witnesses completes it.

Consideration of victim and witness needs at the charging stage

- 3.4 When making charging decisions the prosecutor has to apply the Code for Crown Prosecutors. The full Code test requires that there is sufficient evidence to provide a realistic prospect of conviction and then that it is in the public interest to proceed with a prosecution. Both limbs of the test must be met before a prosecutor can authorise that a defendant is charged with an offence.¹³
- 3.5 Prosecutors at this stage have a duty to consider the credibility and reliability of the evidence in the case. There is also, however, a duty on prosecutors to consider the needs of victims and witnesses and to identify those who are vulnerable and/or intimidated under the legal definition. File examination supported by interviews with prosecutors showed that while appropriate focus is given to considering the standard of evidence, the needs of victims and witnesses are generally not assessed in any depth.

13 A charge can also be made following a threshold test in cases where the full Code test cannot be applied because all the necessary evidence is not available, but there is a need to keep the suspect in custody after charge. However this has to be followed up by a full Code test.

- 3.6 Decisions reached by the charging prosecutor are also recorded on the MG3 form and this should include any victim and witness considerations or needs. Levels of inclusion of this information by prosecutors varied across areas. In the file sample it would have been expected that the charging lawyer would have discussed victim and witness issues with the investigating officer in 70 cases. In only 24 (34.3%) was there evidence of this. The file sample revealed that at the charging stage vulnerable victims and witnesses were properly identified in 11 of 20 relevant cases (55.0%) and intimidated victims and witnesses in 19 out of 38 relevant cases (50.0%). In only 14 of these 58 (24.1%) were any special measures considerations noted on the charging form whether or not they were in fact required.
- 3.7 As part of the police service Workforce Modernisation Programme a number of the police forces visited had introduced separate teams and units to deal with investigations. (These teams provide a dedicated investigative resource and allow first response officers to return promptly to patrol duties.) Whilst inspectors did not interview personnel from such teams, in a recent thematic review of the new charging arrangements carried out jointly by HMCPSI and HMIC¹⁴ inspectors found that an issue commonly raised by supervisors during interview was the decline in quality of the initial investigation and, in particular, statement taking by first response officers. Consequently investigators could find themselves requesting additional material from arresting officers long after the arrest stage, extending unnecessarily the time taken to build a case and seek a charging decision. Where investigations are passed from first response officers to dedicated teams it is important that first response officers are vigilant to the need for early investigation and recording of victim and witness needs, to ensure that investigating officers are aware of all relevant victim and witness issues in the case and that cases are progressed promptly.
- 3.8 Prosecutors reported a general feeling that there is a lack of time at charging centres to enable them to consider fully victim and witness needs. However the findings of the joint review of charging arrangements, referred to above, showed that prosecutors were not always alert to the needs of victims and witnesses as opposed to having insufficient time to consider them. This was found to be exacerbated in cases where MG11 forms received did not include all relevant victim and witness considerations which otherwise would act as a prompt to the charging prosecutor.
- 3.9 In cases where vulnerable and or intimidated witnesses have made a video statement under the achieving best evidence (ABE) guidance¹⁵ there can be insufficient time for prosecutors to watch the full video at the charging appointment. Unless the file is then taken back to the office reliance is placed on the police summary of the video evidence and the opportunity to carry out a full assessment of victims' and witnesses' needs may be missed. Where there is clearly insufficient time to consider the evidence within the allotted charging time, or in complex cases, there should be a structure in place to deal with these effectively. For example the joint thematic review of charging arrangements found that some areas use double length charging time slots for dealing with such cases or have arrangements in place for these to be referred back to and dealt with at the CPS office. In either case provision of the video statement to the prosecutor where practicable in advance of the appointment would help ensure matters could be progressed as quickly as possible.

14 The joint thematic review of the new charging arrangements, Criminal Justice Joint Inspection, November 2008.

15 A method of video recording the evidence of vulnerable victims and victims of sexual offences which is to be used as their evidence in chief at the trial.

- 3.10 The charging advice stage is a critical point in terms of the service provided to victims and witnesses. Where their needs are accurately identified and assessed at this stage it is more likely that these needs will be addressed and met as the case proceeds to trial. We have already set out the requirement for police officers to ensure that victim and witness needs are properly identified and assessed at the early stages, particularly in respect of those who are vulnerable and/or intimidated. At the same time charging prosecutors also should be proactive in raising victim and witness issues with the police and ensuring these are properly responded to and progressed. As the prosecution team, the police and CPS must jointly share the responsibility for ensuring that victims and witnesses receive the highest standards of service. In the file sample action plans requiring further evidence or information to be made available in support of any special measures application might reasonably have been requested of the police in 35 cases. These were found to have been requested in just nine (25.7%).

Case study: In one case observed the charging lawyer had requested police to consider whether special measures would be required but no special measures form was ever submitted. Prior to the trial the WCU informed the CPS that special measures were required but the lawyer in the case incorrectly indicated that due to the nature of the case special measures were not available for this witness. The day before the trial a late special measures application was made based on intimidation. This meant that the witness attended court without knowing if special measures would be granted and the late application delayed the start of the trial resulting in further anxiety.

RECOMMENDATION 4

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.

- 3.11 Complex and/or serious cases where more time is required to make a charging decision are considered by a charging prosecutor in the CPS offices without the pressure of a time limited appointment. In these cases the police will prepare an evidential file with detailed evidence and information on it and this will be sent direct to the CPS office. In one area serious delays were noted of up to ten weeks for the CPS to turn around these written advice files, far in excess of the standard of two weeks. There was further evidence of delay in several other areas, albeit not to the same extent. Delayed decisions in cases, particularly those involving vulnerable and intimidated witnesses, are not acceptable due to the additional stress and worry it can potentially cause.

ASPECT FOR IMPROVEMENT

CPS areas should ensure the timeliness standards for dealing with full written advice files are met.

- 3.12 The MG3 is a standard form which does not include any specific reference to victim and witness needs although some CPS areas have customised it for local use.

CPS Direct uses its own customised charging form (MG3) which includes a specific victim and witness section. This provides a useful prompt to prosecutors to record any relevant considerations or issues pertaining to victims and witnesses noted by them and ask the police to provide where these may be missing.

ASPECT FOR IMPROVEMENT

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.

Applications for special measures

- 3.13 Under the Youth Justice and Criminal Evidence Act 1999 the special measures that can be provided for vulnerable and intimidated witnesses currently are:
- video recorded evidence in chief - where the witness's interview with the police is visually recorded, this can be played as the witness's evidence in chief at the trial;
 - a live link - which enables the witness to give evidence during the trial from outside the courtroom via a televised link. The witness may be accommodated within the court building or in a suitable location outside the court. Witnesses are seen in the courtroom on a television screen;
 - screens - these are placed around the witness box to shield the witness from the defendant;
 - evidence given in private - exclusion from the court of members of the public and the press (except for one named person to represent the press) can be considered in cases involving sexual offences or intimidation;
 - removal of wigs and gowns by barristers and judges;
 - examination of the witness through an intermediary - this is a person who is appointed by the court to assist a vulnerable witness to give evidence at court and during the video recording of their initial evidence (not available for intimidated witnesses); and,
 - aids to communication, e.g. through a communicator or interpreter to enable a vulnerable witness to give their best evidence (not available for intimidated witnesses).
- 3.14 It is important that prosecutors are properly informed before deciding to make an application for special measures under the Act. The Victims' Code requires the CPS to have systems in place to assist prosecutors in considering whether or not to make an application to the court for a special measures direction.
- 3.15 Accurate identification of vulnerable and intimidated witnesses is important to ensure special measures are considered and that the appropriate measures are applied for. As noted earlier vulnerable and intimidated witnesses are not always being identified at the earliest opportunity.

- 3.16 Timescales for special measures applications are set out in paragraph 2.15. We found the timeliness of applications made by the CPS to vary substantially across all the areas. In the file sample special measures were applied for in 15 cases and only six of these were timely (40%). There was also a high level of late applications in the trials we observed; only 20 of the 36 (55.6%) applications made were timely (see annex D). We also observed some applications made on the day of trial. The reasons for this were not always clear but contributing factors appear to be failing to identify vulnerable and/or intimidated witnesses sufficiently early in the case and inaccurate recording and flagging of them. The implementation of Criminal Justice: Simple, Speedy, Summary (details in annex A) can impact on timeliness of applications. Where trial dates are fixed at the first hearing special measures applications for witnesses whose statements are received during the intervening period before the trial date are likely to be out of time and very close to the trial.
- 3.17 Most special measures applications appear to be granted irrespective of whether they were made in time. Some members of the judiciary told us they were frustrated by the level of late applications but provided the application was sound they would approve it, since penalising the prosecution would be detrimental to the witness. However the impact of late applications is that victims and witnesses have to wait longer than they should to know whether special measures have been granted, adding unnecessary stress. Applications for special measures made on the day are unacceptable other than in exceptional circumstances.

ASPECT FOR IMPROVEMENT

Police forces and CPS areas should work together to ensure that special measures applications are timely and made at the earliest opportunity.

- 3.18 The special measures application process itself is not as streamlined and efficient as it might be. The same process applies to those who have an automatic entitlement to be considered, i.e. children under the age of 17, as to potentially intimidated victims and witnesses where a case needs to be made as to whether they fall within the definition. Where there are a number of vulnerable and/or intimidated witnesses involved in a case separate applications need to be made for each of these, which is time consuming.

Case study: We observed a serious case involving a large number of vulnerable (by age) witnesses. The judge, prosecution and defence were all in agreement that these witnesses had a right to give their evidence using special measures. Despite this agreement the prosecution was still required to file a formal written application for each witness. This is a six page form which has to be served with a covering letter on the court and the defence, and possibly counsel, plus a copy retained on the CPS file. As a result somewhere between 126 to 147 sheets of paper were generated. It will have taken a prosecutor or caseworker some time to prepare the applications.

RECOMMENDATION 5

The Office for Criminal Justice Reform should:

- 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.
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Early special measures meetings

- 3.19 Joint guidance was issued by the Home Office, CPS and ACPO on early special measures meetings¹⁶ which was under review at the time of this inspection. This indicates that it is the responsibility of the investigating police officer and the CPS charging lawyer to decide whether in some cases holding an early special measures meeting between them and a vulnerable and/or intimidated witness and/or other relevant person, such as an intermediary, would be of benefit to highlight special measure requirements. This type of meeting appears to be under utilised. Although in most cases discussion between the police and prosecutor at the charging stage regarding the need for special measures is sufficient these early meetings can be of particular benefit in certain cases, for instance when the use of an intermediary may be under consideration. The guidance also states there can be no strict rules when the early special measures meetings should take place but in appropriate cases they must be considered at the charging stage.
- 3.20 From the interviews with police officers we found their responsibility to request an early special measures meeting in relevant cases was not widely known. Across all the inspection sites there was no evidence of any early special measures meetings taking place between the prosecutor and investigating officer other than in the more serious cases, and these did not involve the victim or witness at all. For all other cases if there is a discussion it is normally carried out through an exchange of e-mails.

ASPECT FOR IMPROVEMENT

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 needs of vulnerable and intimidated victims and witnesses are met.

Communication concerning special measures

- 3.21 Particular difficulties were highlighted in two areas where WCU officers were not made aware when special measures applications were granted by the court, and hence were not able to update the victim or witness prior to their attending court and provide the reassurance that special measures would be available for them. We found that, in general, systems for courts to update WCUs were not fully effective.

¹⁶ Early special measures meetings between the Police and the CPS and meetings between the CPS and vulnerable or intimidated witnesses – Practice Guidance. Implementing the Speaking up for Justice Report, 2001.

ASPECT FOR IMPROVEMENT

CPS areas should assure themselves that local arrangements are in place to ensure witness care units are made aware of the outcomes of special measures applications promptly.

The use of intermediaries

- 3.22 The intermediaries scheme was rolled out in September 2008. Awareness of the use of intermediaries to facilitate communication is slowly increasing but usage is variable and ranged from them having been hardly used at all in some areas to a relatively good rate of use in Liverpool, one of the areas in which the scheme was initially piloted.

A Witness Profiling Scheme is in operation in Liverpool whereby the CPS works in close partnership with social services, who undertake an assessment of any vulnerable witnesses to ascertain exactly what type of intermediary would benefit them most to maximise their ability to give their best evidence to the court. Although this is a relatively new scheme it appears to be working well with some good results.

Case study: A case was observed where a vulnerable witness had difficulties with verbal communication. A speech therapist was appointed as an intermediary and assisted the witness in giving evidence to good effect.

Communicating directly with victims when no charge is brought, the charge is reduced or the case is withdrawn

- 3.23 The Direct Communication with Victims scheme (DCV), in operation since 2001, together with the Victims' Code require victims of crime to be informed promptly and in writing if no charge is to be brought in their case, if the case is withdrawn or discontinued after charge, or if the charge substantially reduced or increased in gravity. The roles of both the police and the CPS are defined.
- 3.24 The decision as to whether or not there is to be a charge in the more serious cases rests with the CPS. In such cases if there has been a discussion between a police officer and a prosecutor and there is to be no charge, then it falls to the police officer to notify the victim. Where a prosecutor makes a decision that there is insufficient evidence to bring any proceedings, without discussion with a police officer, it is the responsibility of the CPS to notify the victim. If a case which proceeds after a charge has been authorised is later discontinued, withdrawn, or the charge is substantially altered or amended, it is the responsibility of the CPS to notify victims and explain the reasons for the decision.
- 3.25 The explanation is provided in a letter which, under the Victims' Code, in normal circumstances should be sent within five working days of the decision being taken, but within one working day in the case of vulnerable or intimidated victims.
- 3.26 The Victims' Code imposes an additional obligation on the CPS in cases involving a death allegedly caused by criminal conduct, for example murder or manslaughter, death caused by dangerous driving and some other types of cases such as serious sexual offences. In such cases the CPS must offer to meet the victims' families, or the victims themselves, if the prosecutor decides not to bring any proceedings or the charges preferred are dropped or substantially

altered. The Victim Focus Scheme, introduced more recently, reinforced this requirement in homicide cases to ensure an enhanced service is provided to bereaved families. This enhanced service includes offering meetings to answer queries and explain the court process and ensures that families know they have the right to make a VPS so that the court is aware of the impact the crime has had on them.

Compliance with the requirements of the Direct Communication with Victims scheme

- 3.27 A number of inspections have been carried out by HMCPSI over the last two years which have included some examination of the operation of the DCV scheme and a specific audit of CPS compliance was carried out in 2007.¹⁷ The inspections and audit have revealed variable compliance with DCV requirements across CPS areas and consequently a mixed standard of service to victims.
- 3.28 The conclusion from HMCPSI's overall performance assessments of all CPS areas¹⁸ was that a substantial proportion of the letters which should have been sent were not and that the DCV initiative was one where managers had 'taken their eye off the ball'.
- 3.29 Findings from specific inspections included the fact that:
- cases involving a vulnerable or intimidated victim were not routinely flagged on the CPS casework management system making it difficult to ensure that the short timescales for the sending of letters were complied with;
 - compliance with timescales varied considerably across the country;
 - although the quality of letters to victims was found to be generally satisfactory, some lacked empathy; and
 - particularly in fatal road traffic cases there was confusion amongst prosecutors about the need to send a letter or offer a meeting with families in cases where no charge was to be brought and there had been no discussion with the police officer.
- 3.30 During this review the level of awareness amongst prosecutors of the DCV requirements and relevant duties under the Victims' Code and Prosecutors' Pledge was found to be generally good. However some indicated that whilst they were aware of their obligations, time constraints meant that DCV letters were not always considered a priority. In cases where no charge was to be brought prosecutors considered it preferable to discuss the case with the investigating officer as this helped them to make a more informed decision and in these circumstances the police were responsible for informing the victims and witnesses.
- 3.31 The majority of prosecutors had received DCV training but, for some, it was some time ago and needed to be updated. Training is also needed for counsel and solicitors who sometimes deal with cases on behalf of the CPS to ensure they were aware of the requirements of the DCV scheme and the approach to victims generally.

17 Without Consent – a Report on the Joint Review of the Investigation of Prosecution of Rape Offences, HMCPSI and HMIC, January 2007; Direct Communication with Victims – an audit of CPS performance in relation to keeping victims informed, HMCPSI, September 2007; Overall performance assessments of CPS areas, HMCPSI, March 2008 and CPS performance in relation to the handling of fatal road traffic cases, HMCPSI, November 2008.

18 Overall performance assessments of CPS areas, HMCPSI, March 2008.

Identification of Direct Communication with Victims cases

- 3.32 Ensuring that letters are sent in all relevant cases continues to be problematic. In order to drive up performance the CPS has set its areas targets for the number of letters that should be sent based on an assessment of the likely number of relevant discontinued cases. This is known as the proxy target.
- 3.33 HMCPSI, in its DCV audit, expressed concerns at the way the target was calculated.¹⁹ Performance against the target varies considerably across CPS areas with performance in May 2008 ranging from 45% of the target number of letters being sent in one area to 185% in another. The latter performance particularly indicates that the target is not well set. The last rolling quarter for which CPS data is available (to August 2008) indicated that 111.4% of expected letters were being sent. Our file examination, however, found letters were sent in only 34 out of 44 relevant cases (77.3%).
- 3.34 Although the responsibilities of the police, CPS and WCUs for DCV have been defined in the Victims' Code, in certain instances both the CPS and WCU officers send letters to victims indicating the outcome of the case - the CPS under the DCV scheme when a case is dropped and the WCU as part of the updating requirements of the NWNJ initiative. We found that these letters duplicated information and were not always sent at the same time or expressed in the same terms which could potentially lead to some confusion for victims.

Case study: In one case we examined a letter was sent from the WCU stating the defendant had pleaded guilty and received a certain sentence. In fact the defendant had pleaded guilty to one charge on a basis the CPS had accepted and the CPS offered no evidence on two other charges. This triggered a DCV letter which contained far more detail. The two letters confirming essentially the same outcome lacked consistency. The WCU letter provided only part of the picture which may have caused confusion for the victim.

Timeliness of contact with victims

- 3.35 CPS figures suggest that the timeliness with which DCV letters are sent has improved markedly during the last three years, with the proportion sent within five days increasing from 65% in 2005-06 to 77% in 2007-08, and improving into 2008-09, albeit that performance still some distance away from the 100% target. In the last rolling quarter for which data is available (to August 2008) performance was 85.5%. Areas are finding the challenging one day target for initial notification of vulnerable and intimidated victims difficult to meet due to the practicalities involved. Performance in the rolling quarter to August 2008 was 75.9%. This varied significantly across areas from 52% to 100%.
- 3.36 Our file examination showed that many letters were not sent within the relevant timescales: overall only 20 out of 34 (58.8%) were sent within five days with performance varying across areas.
- 3.37 Inspectors also found the duty set out in the Victims' Code to record the reason why a DCV letter was not required in a particular case was not always complied with.

¹⁹ The CPS was reviewing the basis on which targets should be set at the time of this review. HMCPSI will consider the new arrangements during a follow up audit which will take place in 2009-10.

The quality of letters to victims

3.38 The quality of DCV letters seen as part of this inspection varied greatly in terms of content and presentation.

3.39 Only 24 out of 34 letters examined (70.6%) were felt to be of satisfactory quality and sensitivity. Some were very poor with little explanation or empathy. In some there was a tendency to simply quote the Victims' Code verbatim, which is not appropriate as it is written in language that is not necessarily easy for victims to understand. Of more concern was the quality of a minority of letters to victims of domestic violence, sent after they had failed to attend at trial and the prosecutor had had to offer no evidence. Although dropping the case was as a direct result of the victims' failure to attend to give evidence, no consideration appeared to have been given to the possible reasons behind their non-attendance or any other aspects of the victims' general vulnerability. The letters can best be described as terse and contained no information about support options that were available. These shortcomings were apparent in several areas. By contrast in CPS Merseyside a specific DCV letter for victims of domestic violence has been developed which is both informative and shows the appropriate degree of empathy required in dealing with this particularly sensitive type of case.

Case study 1: This was a letter sent to a victim in a domestic violence case who did not attend at trial. The letter is brief and does not display appropriate empathy for the type of case that it relates to:

[REDACTED] 2008

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

R v [REDACTED] DOH: [REDACTED] 2008

I write to inform you that the above case has been concluded.

I note that you did not attend the hearing and, as a result, the prosecution was not in a position to proceed with the case.

The case is therefore now finalised and cannot be revived. We are now filing our papers accordingly.

Yours sincerely,

Case study 2: A more appropriate letter sent in a similar case where a victim of domestic violence failed to attend at trial:

PRIVATE & CONFIDENTIAL

████████████████████
████████████████████
████████████████████
██████████
██████████ 2008

Dear ██████████

R v ██████████

████████████████████ Police Force have sent me a file relating to the case of the defendant, who was charged, on the authority of the Crown Prosecution Service with ██████████ on ██████████ 2008.

When deciding whether or not to prosecute, the Crown Prosecution Service has to follow the guidance set out in the Code for Crown Prosecutors. The Code test sets out two tests that have to be applied by Crown Prosecutors to ensure that our decisions are both fair and consistent. The enclosed leaflet explains what the tests are and how the Crown Prosecutors apply the Code for Crown Prosecutors to each case.

The papers in this case were carefully reviewed and it was decided that there was sufficient evidence to provide a realistic prospect of conviction and that it was in the public interest to proceed.

The case was due to be tried on ██████████ 2008 at ██████████ Magistrates Court. I am informed that the Witness Care Unit notified you of the time and date and that you were required to attend court to give evidence. Without your evidence the case against the defendant could not be proved. On the day of the trial you did not come to court. I made enquiries to try and find out why you had not attended but I was unsuccessful. As a result, I had to offer no evidence against the defendant and the case was dismissed.

If there are any further incidents, you should not hesitate to contact the police. If you would like advice, support or information about experiencing domestic violence, you may wish to contact your local Women's Aid Office on ██████████.

I hope that this letter, together with the leaflet, helps you to understand what has happened in this case and how I reached my decision.

Yours sincerely

Senior Crown Prosecutor

3.40 The inspection also found that care needs to be taken by prosecutors and others when using standard paragraphs in letters, to ensure they accurately reflect the circumstances of the case; examples were also seen of poor and inappropriate editing of standard paragraphs with free text which did not fit the context. Depending on area structures prosecutors do not always prepare or see the DCV letters that are sent out in their name. In some cases the letters are signed on their behalf by staff in central units or by team leaders. Whilst this can improve the timeliness with which letters are sent to victims it can also lead to the content of the letters being less than satisfactory.

Meetings with victims

3.41 Although prosecutors indicated that they were aware of their obligations to offer meetings in appropriate cases file examination showed that meetings were offered in only three out of four relevant cases. Although not a large sample it generally supports findings in earlier inspections that, whilst the obligation to offer meetings may be well known, evidence to show it is being complied with is either not being recorded or meetings are not being offered in all appropriate cases.

3.42 HMCPsi's recent inspection into the handling of fatal road traffic cases²⁰ found that meetings with the prosecutor to explain decisions are not always offered although, when they were, the offer is not always taken up by the family. In the file sample considered as part of that inspection meetings were offered in only three out of 12 relevant cases and a meeting took place in only one.

Taking things forward

3.43 Following HMCPsi's audit of compliance in 2007 the CPS instituted an improvement strategy. Workshops were held for staff to explore the barriers to good performance and identify good practice; work was undertaken with specific CPS areas where performance needed to improve; revised training arrangements were planned; and guidance issued to improve the recording of victim and witness details on the CPS case management system.

3.44 Although HMCPsi has yet to evaluate formally whether these steps have been fully implemented the need for improvement is recognised by the CPS and is being taken seriously. This inspection has shown, however, that despite increased focus on ensuring victims are kept informed at the right time the need for further improvement remains. Until then the service to victims is neither consistent across the country, nor at the level envisaged by the by DCV scheme or the Victims' Code.

RECOMMENDATION 6

CPS areas should:

- 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.
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²⁰ The Second Thematic Review of CPS Decision-making, Conduct and Prosecution of cases arising from Road Traffic Offences involving Fatalities, HMCPsi, November 2008.

ASPECT FOR IMPROVEMENT

CPS areas should:

- ensure training for agents incorporates Direct Communication with Victims responsibilities (and also requirements of prosecutors under the Victims' Code and Prosecutors' Pledge); and
 - agree with witness care units 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.
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Payment of expenses

- 3.45 Payment of expenses for prosecution witnesses is a CPS responsibility. Most witnesses interviewed (82 of 88 - 93.2%) said they had received a witness expense form and information on how to complete it. A number commented that the form was overly complicated to complete. Consideration could usefully be given to simplifying the form. Performance data indicates that a high proportion of witness expenses are paid within the ten day target (98% in 2007 and 99% in 2008) and performance in this respect is consistently good across all areas.
- 3.46 Compensation awards were not examined as part of this review. However a number of judges and magistrates pointed out that applications for compensation are not always accompanied by good quality supporting documentation, such as photographs or acceptable invoices, which can make setting awards difficult.

4 FROM CHARGE TO TRIAL: THE SERVICE PROVIDED TO VICTIMS AND WITNESSES BY WITNESS CARE UNITS

Assessing witness needs

What witnesses should expect

- 4.1 The establishment of WCUs was founded on recognition of the need to provide support to witnesses from the point of charge to case completion, through the provision of a single named contact and based on assessment of an individual's needs. NWNJ minimum requirements²¹ specify that witnesses should be subject to a detailed needs assessment following a not guilty plea being entered. This follows on from the initial needs assessment conducted by police officers. A witness may opt out of a needs assessment if he or she wishes.
- 4.2 The minimum requirements specifically provide that the needs assessment should address a range of issues including identification of any vulnerable or intimidated witnesses, any needs for special measures, whether a VPS has been taken, transport issues, childcare issues, the need for a pre-court visit, referral to support agencies and any employment concerns regarding attendance.
- 4.3 Inspectors' findings reflected the varying performance identified by areas' self assessments. We found that victims are most likely to receive needs assessments. However the position for other witnesses was more variable, with non-victim witnesses considered less of a priority. In the file sample there were 44 cases where a detailed needs assessments should have been undertaken for witnesses. These were actually undertaken in 30 of these (68.2%). The timeliness and quality of assessments was also found to be variable both across and within areas.
- 4.4 Generally WCUs offering support to witnesses at the magistrates' courts were better able to provide needs assessments to those witnesses. We found that for the more serious cases which are committed to the Crown Court for trial WCUs were more likely to struggle with their responsibilities. Reasons for this included the often high number of witnesses involved in cases which meant in some instances there had to be a prioritisation, court scheduling which was not always compatible with witness care (see also paragraphs 4.61-4.72) and the effectiveness of supporting processes, for example the timeliness and extent of witness information received from the CPS.
- 4.5 The absence of a completed needs assessment can result from failed attempts to speak with a witness. A minority of witnesses may not wish to attend court or be subject to a needs assessment and may prove difficult to contact. Analysis undertaken by one area visited indicated a clear correlation between declining or failure to complete a needs assessment and non-attendance at court.
- 4.6 An incremental approach to needs assessments had been adopted by some WCUs with an initial assessment made at the first phone call, which is added to during subsequent contact. An incremental approach begun prior to a plea being entered, for example in specialist cases such as domestic abuse, is a positive approach and recommended by the NWNJ implementation guidance. However it is less satisfactory when adopted after the not guilty plea. It has become

21 The Victims' Code also specifies that full needs assessments for victims should be completed by WCUs where a not guilty plea has been entered. Standard 10 of the Witness Charter also provides that a follow up needs assessment should be completed by the local WCU.

accepted practice that some areas conduct mini needs assessments pending confirmation of the witness actually being required to attend court (usually on receipt of the formal list of witnesses required to attend court (LWAC) from the CPS). This is normally due to resource constraints. Whilst this is not ideal when LWACs are received promptly this approach can work; but this is not always the case. At one of the review sites LWACs were received after plea and case management hearings; this was the first information received about the witnesses and, together with short times to trial, meant it was very difficult for WCU officers to complete the necessary needs assessments in time.

- 4.7 Assessment of WCU performance by the NWNJ project team in 2006 indicated that 12 of the 42 areas complied fully with the needs assessment requirement. This had risen to 23 areas in September 2007 and to 25 in April 2008 (60%), when areas self assessed their performance. However inspectors have some concerns about the robustness of these assessments (see paragraphs 6.15 and 7.62) This review has shown that the level of full compliance remains less than satisfactory.

RECOMMENDATION 7

The joint Victim and Witness Care Delivery Unit should take steps to ensure that witness care units (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.

Support provided to witnesses to help ensure their attendance

Witness attendance levels

- 4.8 The purpose of the support provided by WCUs is not only to improve the experience of witnesses but also to improve the level of witness attendance at court and the likelihood of bringing the guilty to justice. Improving witness attendance and, consequently, reducing the number of ineffective and cracked trials resulting from witness non-attendance are key performance measures of the NWNJ initiative. Since its implementation witness attendance rates have improved slowly but steadily from the pre-NWNJ baseline of 77.3%. In 2006-07, 83.8% of witnesses attended court, 84.3% in 2007-08, and 85.1% up until August 2008, the last month for which figures are available.

General support provided to witnesses

- 4.9 The support provided to victims and witnesses should be tailored to their individual needs. For the majority of witnesses this usually concerns practical support such as checking when they are available to attend a trial, assisting with any practical arrangements such as transport, considering visits to court before the trial, and supplying information on the role of witnesses and the location and facilities at the court.
- 4.10 The degree of assistance with practical matters varied. Officers in some WCUs merely gave general information whilst others organised more wider ranging support, for example some went as far as to arrange pet minding services. Inspectors found that even within criminal justice areas WCU officers adopted differing approaches to organising and providing support for witnesses.

- 4.11 Assistance with making childcare arrangements was seen as a key support mechanism to help many witnesses attend court. In some areas WCU officers get directly involved in arranging childcare with a service provider where this is necessary and the witness wants help, whereas in others they merely provide a telephone number for the witnesses to call. While there is an expectation that every area pays for any necessary support in Merseyside invoices for childcare are sent directly to the WCU for payment, rather than requiring witnesses to pay and then submit an expenses form, which was considered a helpful step.

ASPECT FOR IMPROVEMENT

The joint Victim and Witness Care Delivery Unit should ensure that witness care units 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.

- 4.12 NWNJ also requires that all WCUs should have in place a support/contact directory identifying sources of further support for witnesses with specific needs. Inspectors found some form of contact directory in place in all the WCUs visited, however their extensiveness and the degree to which they were used and updated varied. For example one unit had access to a police support database containing comprehensive information, but some staff were not fully aware of its existence or its potential for use and had not been appropriately trained. In another a support contact directory had been established but staff were not aware of it. On a day to day basis WCU officers were often reliant on displayed information or business cards they kept to hand personally.

ASPECT FOR IMPROVEMENT

The joint Victim and Witness Care Delivery Unit should ensure that:

- Witness care unit local support contact/services directories are comprehensive, reflecting the needs of witnesses in their area, and kept up to date; and
 - Witness care unit officers are aware of the directories and are readily able to access them.
-

Pre-trial court familiarisation visits

- 4.13 It is considered good practice for WCU officers, as part of the needs assessment, to check if witnesses would like a pre-trial familiarisation visit to the courthouse to help prepare them for giving evidence. Visits are being offered in the majority of cases but the take up is relatively low. In each month since April 2008 visits have been offered to around 70% of witnesses and taken up by approximately 20%.²² This was reflected in interviews with witnesses undertaken as part of this review: whilst 69 of the 90 witnesses interviewed (76.7%) said they had been offered a pre-trial visit, only 17 (24.6%) had taken up the offer.
- 4.14 The reasons for the low take up vary. Where there is late notification of the witnesses required to attend court needs assessments may not be undertaken until near the trial, leaving little time to identify suitable dates. Visits are also generally only available during normal court opening hours. A number of witnesses said they had difficulties in fitting this in with work commitments and others lived too far away to make a visit viable. Whilst we found that WCUs, the Witness

22 Witness Management System (WMS) performance data, see paragraphs 6.20-6.21.

Service and courts generally work well together to facilitate court familiarisation visits, they generally occur at the start or end of the court day; little thought has been given to out of hours visits which would be easier for working witnesses. Additionally some witnesses may decide that they do not need a pre-trial visit. Although second visits can on occasion be arranged we also spoke with several witnesses who would have appreciated a second court familiarisation visit, particularly when the case had been delayed for a considerable amount of time. In one case a child witness had a court familiarisation visit in early 2007, but the trial was delayed until August 2008 and the child had forgotten much of what they had been shown and told.

- 4.15 Pre-trial visits often occur on the morning of the trial which, although helpful, is not ideal in that it does not enable witnesses to prepare themselves in advance of the trial day. Witnesses told us that pre-trial familiarisation visits, either in advance or on the day, are extremely valuable but it may be the case that visits are not ‘sold’ to witnesses as well as they might be.

ASPECT FOR IMPROVEMENT

The joint Victim and Witness Care Delivery Unit should ensure that witness care units:

- offer all witnesses the opportunity of a pre-trial familiarisation 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.
-

- 4.16 More recently Victim Support has introduced an enhanced service for vulnerable and intimidated witnesses whereby, in some cases, they visit the witnesses in their homes to explain the role of witnesses and what happens at court. This service was positively commented upon by the few witnesses we spoke to who had received such a visit.

Vulnerable and intimidated witnesses

- 4.17 WCU officers should, when completing the needs assessments, seek to identify any vulnerable or intimidated witnesses, discuss the applicability of special measures and ensure that they and witnesses already identified as such receive the correct support.
- 4.18 The majority of WCU officers believed that they were able to identify those who are vulnerable or intimidated and discussed their needs with them. Officers also considered they had sufficient knowledge about the different special measures that can be applied for. However in some instances officers had only learnt about special measures as part of their on the job training and through experience rather than through specific instruction. This can potentially lead to a less than full understanding and inspectors found that there was some misunderstanding about the different categories of witnesses to whom special measures may be applicable. We highlight elsewhere in this report the impact of passing on inaccurate information about special measures to witnesses. We found training was not always adequate in this respect. Training issues are addressed in paragraph 4.75-4.81.

Victim Personal Statements

- 4.19 As part of the needs assessment WCU officers should ascertain whether a VPS has been taken where appropriate and, where it has not and the victim wishes to provide a statement, arrange for the police to take one. If a VPS has already been taken officers should check to see if it requires updating and where necessary arrange for this to be done.

4.20 We found that the majority of WCU officers understood what their role should be in relation to VPSs (see paragraphs 2.33-2.37). However as reported earlier the level of statements remains too low. National performance data shows that in August 2008, the last month for which data is available, WCUs were involved in instigating or updating 604 Victim Personal Statements (8% of overall victims dealt with by WCUs).²³ Whilst taking a VPS is primarily a police role there is scope for greater involvement by WCU officers in checking that this has been done and arranging for victims who have not been given an opportunity to make a statement, or who may have not wished to give a statement but on reflection now wish to do so, to make one.

Reluctant witnesses

- 4.21 There will always be some witnesses who are unwilling to attend court. This can be for a variety of reasons including concern about intimidation. Victim and witness needs can change over time and issues of potential intimidation may not become apparent until nearer the trial date. We found a good level of awareness of the need to be alert to potential intimidation on the part of WCU officers and of the need to deal with this immediately. It is considered good practice for officers to contact the police on behalf of the witness in such cases. In Staffordshire any incidents of intimidation identified by WCU officers are reported direct to the crime desk for investigation rather than waiting for the officer in charge to be available.
- 4.22 For those witnesses who are unwilling to attend court and are not responsive to contact a witness summons (requiring a witness to attend under threat of arrest if not) can be applied for and issued by the court. Nationally there has been an increase in the recorded number of witness summons issued, although overall the proportion of witnesses summonsed to attend is still very low. Until June 2008 summons had been issued to around 1% of witnesses each month; since then the rate has increased to 2%.²⁴ This may be attributable, at least in part, to work being done to improve the accuracy of data (because it was thought that not all summonses were being captured). It is difficult therefore to identify specific reasons for the apparent increase. Witness care is certainly better managed than previously and a more robust approach may be taken to ensuring the attendance of unwilling witnesses; or it may be that more witnesses are reluctant to attend court.
- 4.23 Interviews with prosecutors and WCU officers indicated that the approach to the use of witness summons can differ both across and within areas. Whilst some prosecutors said that they avoided witness summonses others considered that a summons can in certain cases be positive from a witness's perspective, for example where a young witness is being put under peer pressure not to attend, being summonsed may help. The same was said to be true for some victims of domestic abuse. It was unclear whether prosecutors, acting on information from the WCU officers, used the same criteria in deciding whether a witness merited the use of witness summons. Concern was expressed that in some instances witness summons may have been used unnecessarily. Inspectors were told of one instance when a witness was served with a summons having not responded to a witness warning letter due to being away on holiday. There were also differences in dealing with non-attendance after a summons had been issued. Thought needs to be given at a national and local level to ensuring an appropriate and consistent approach to applications for witness summonses.

23 Based on WMS data which is incomplete as not all areas currently use this system (see paragraphs 6.20-21).

24 In August 2008 summons were issued to 259 of the 15,039 prosecution witnesses required to attend court. Source: WMS data.

Case study: In the 70 cases observed 16 witness summons were issued. Ten of the summonsed witnesses attended and six did not. No action was taken in respect of five who did not attend whilst in one case a warrant was sought. That witness was arrested and brought to court only for the CPS to then offer no evidence and discontinue the case.

RECOMMENDATION 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.

The information provided to witnesses before they go to court

- 4.24 The large majority of prosecution witnesses we spoke to received advance information about the courthouse and court proceedings, including the time they were required to attend, although the amount and quality of information is variable. Of the witnesses we interviewed 66 (74.2%) said they had been given sufficient information. Negative feedback centred on map quality and directions provided, including those to an alternative witness entrance. WCUs need to ensure that maps and directions provided to witnesses are clear.
- 4.25 Liaison between WCUs, the Witness Service and courts is not always sufficient to provide up to date and useful information to victims and witnesses. Inspectors found that some victims and witnesses in the most serious cases did not receive adequate information because there was confusion over which agency, or part of the agency, was responsible for sending what information. However where there was good liaison between agencies the quality and timeliness of information tended to be good.
- 4.26 We found instances of information being sent twice to witnesses or where each agency thought the other had sent information, so witnesses actually received none. Instances were also found of inaccurate information, for example one WCU was sending out maps for the magistrates' courts printed from HMCS's website which were incorrect as the courthouse had moved many years previously. Finally there were also examples of inappropriate information. The Witness Service in one area was including information about special measures in the information sent to children and young witnesses, which was too late in the process and had the potential to cause confusion. The WCU was unaware of this.

Case studies: We spoke to one family of witnesses in a Crown Court case who said that the only pre-court information they had received was from a neighbour (also a witness in the case) and from calling the police officer involved in the case to update them.

In another case witnesses were bemused because they had received court information and witness leaflets twice, from both the witness care unit and the Witness Service.

- 4.27 A useful and informative multilingual witness information DVD entitled Going to Court - A Step by Step Guide to being a Witness has been developed by HMCS. This was piloted during 2007 and launched nationally in 2008 with copies sent to all WCUs, defence practices and Witness Services across England and Wales. However the extent of circulation of this valuable

DVD to witnesses was variable; only around a third (34.9%) of the witnesses we interviewed were aware of the DVD and had had an opportunity to view it. Even when the DVD had been received few witnesses reported that they had watched it. Where there was facilitated viewing, for example when Witness Service showed it during home visits, witnesses had found it helpful, informative and, most importantly, reassuring.

- 4.28 A persistent concern raised during interviews was that witnesses felt they had received too much information from various agencies which could be off putting and confirmed that because of this they tended not to look at much of it. At the time of our visit Staffordshire LCJB was in the process of reviewing all the information sent to witnesses from all agencies with a view to rationalising and streamlining what is sent out. Other criminal justice areas could helpfully do the same.

ASPECT FOR IMPROVEMENT

The Office for Criminal Justice Reform, working in close liaison with ACPO, the CPS, HMCS and Witness Support, should ensure that information provided to victims and witnesses is reviewed and rationalised and clear guidance in this respect issued to front line staff.

- 4.29 Defence witnesses receive no information from the criminal justice agencies and are reliant on that provided by defence solicitors, which tends to be limited to the date and time of hearing. They do not appear to receive the Going to Court DVD despite copies having been sent to all defence practices. Whilst only four defence solicitors responded to our inspection questionnaire, they confirmed that they are not using the DVD.

ASPECT FOR IMPROVEMENT

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.

Written correspondence with witnesses

- 4.30 The quality of letters sent to witnesses was found to be variable and some were poor. Inspectors found examples of relevant information such as court dates not being included, instructions to the WCU officers and options for completion not being deleted and nonsensical letters. The terminology used and also the overall tone, at times, lacked empathy. For example poor quality letters to a nervous robbery victim and the victim of a serious assault were seen. The quality suggested that no real thought had gone into the letter, or its likely impact, and that it was merely being sent out because it had to be. The variable quality also suggested an absence of effective monitoring within WCUs of the standard of work being undertaken.

Case study: An example of a standard letter seen by an inspector which is poorly edited. Note the highlighted sections which remained in the letter when it was sent out and the fairly peremptory tone:

Dear [REDACTED]

Case Against [REDACTED]

Unique Reference Number [REDACTED]

Offence and Date of Offence <Enter details>

Notice to attend [REDACTED] Crown Court

I am writing to confirm that you are required to attend court to give your evidence.

At the hearing on [REDACTED] 2008 at [REDACTED] Crown Court, [REDACTED] pleaded “not guilty” to the following offences:

1 WOUNDING//CAUSING GRIEVOUS BODILY HARM WITH INTENT

2 WOUNDING//CAUSING GRIEVOUS BODILY HARM WITH INTENT

3 Causing grievous bodily harm with intent to do grievous bodily harm

Delete as appropriate*

* The defendant is on unconditional bail / the defendant was remanded in custody / the defendant is on bail with the following conditions:

Remand in custody

What happens next

The trial is set to begin on [REDACTED] 2008 at the [REDACTED] Crown Court. It is expected to last for (specify time period in days/weeks).

At this stage I am unable to tell you the exact time and date when you should attend. This is because (Explain: for example: there are a large number of witnesses for the prosecution and we are awaiting details of the order in which they must give their evidence). However, it is likely to be early on in the trial.

I appreciate that it may be difficult to keep all this time free, but it is very important at this stage that you are available to attend court at any time throughout the trial. As soon as I know the exact date and time when you should attend, I will let you know.

Please fill in the reply form enclosed with this letter confirming that you will attend court. Please send this to me within the next seven days. I enclose a freepost envelope. If you prefer you can call me and let me know.

We have already discussed what will happen on the day and the following arrangements have been made to help you:

(Specify Special Measures/arrangements agreed) (eg Special Measures – if granted; childcare arrangements; separate waiting room etc...)

I will pass your details to the Witness Service who can help you on the day at court, unless you have asked me not to do this. The Witness Service offers emotional and practical support to victims, witnesses and their families and friends before the trial and on the day you attend court. For example, they can arrange for you to visit the court before the day of the trial so that you can have a look around.

I enclose a booklet that explains all about what happens in court.
I appreciate that attending court can be worrying, so if there is anything I can help you with please call me on the number at the top of this letter during our usual opening hours. If you prefer you can write to me or e-mail me at my addresses above.
Thank you for your assistance as a witness in this case. Giving evidence is very important and your help is greatly appreciated.

Yours sincerely

Witness Care Officer

- 4.31 Standard letter templates can be customised by WCU officers. Whilst there was some concern expressed by WCU staff about the quality of the templates, we consider that they provide an adequate basis for letters provided they are viewed as a starting point and customised properly to reflect the individual circumstances of a case.

ASPECT FOR IMPROVEMENT

The joint Victim and Witness Care Delivery Unit should ensure that appropriate monitoring is in place in witness care units to assure the quality of letters sent to victims and witnesses.

Keeping witnesses updated about relevant court hearings and outcomes

Preferred means of contact

- 4.32 A minimum requirement of NWNJ is that all witnesses should be asked for their preferred means of contact and communicated with using this method. In April 2008, 34 of the 42 criminal justice areas believed their WCUs were meeting this requirement.²⁵ However based on the information provided in their self assessments the Victim and Witness Care Delivery Unit (VWCDU) rated only 23 areas as meeting this requirement.
- 4.33 Contact by telephone is the preferred means for the majority of witnesses. There can be difficulties if the witness is not contactable during working hours as WCUs generally operate only during these times. In London the WCU visited had introduced extended office hours to facilitate better contact and support of witnesses. Mobile phones are increasingly being used. One area has introduced text messaging, leaving short texts when necessary asking the witness to contact them. Although potentially a positive development it was not made clear to recipients that the WCU concerned could not receive text messages in return, resulting in some witnesses replying in the false belief that their message would be received and acted upon.

25 Result of self assessment of compliance against NWNJ requirements that all areas were required to undertake by the national Victim and Witness Care Delivery Unit in April 2008.

Single point of contact

- 4.34 WCUs are also required to provide a single point of contact for witnesses throughout the case. This is beneficial from a witness perspective and can help engender a better rapport between the witness and unit. In April 2008, 37 out of the 42 areas believed they met this requirement on a consistent basis. However the VWCDU assessed only 30 areas as meeting the requirement.
- 4.35 Inspectors found that in the majority of instances cases and their related witnesses were allocated to individual WCU officers. However named individuals were not always available and consequently were assisted by other WCU officers. The use of a ‘buddy scheme’ to manage absence of the allocated single point of contact has been promoted since WCUs were first established. In larger units it is easier to establish teams that share responsibility for witnesses. For example in one witnesses were given a main contact plus several other team members to ensure there was always someone available with knowledge of their case. Issues in relation to roles and responsibilities for contact in cases involving the most serious crime are dealt with in paragraphs 2.27-2.32.

Extent and timeliness of case information provided to witnesses

- 4.36 NWNJ sets out minimum requirements in respect of information to be provided to witnesses about their case. The courts have an obligation to provide WCUs with timely case information and the units an obligation for the timely updating of witnesses. This covers notice of case hearings and outcomes, including the sentence. The subsequent Victims’ Code generally replicates²⁶ the minimum requirements for victims, but places the requirements on a statutory footing. In terms of timeliness, the stated expectation under NWNJ is that information would be provided to witnesses by the end of the working day following the relevant court hearing; however in practice the expectation, as duplicated in the Victims’ Code, has become within one working day of the provision of information from the court. This in practice can be several days later by which time a victim could well have heard the outcome through the media.

Table 3: Performance of WCUs in relation to provision and timeliness of information

NWNJ minimum requirements	Number of areas fully compliant with the requirement		
	2006	Sept 2007	April 2008
Witnesses in not guilty plea cases are informed as to dates of hearings and their outcomes	9	19	22 (52%)
Witnesses in guilty plea cases are informed as to the hearing outcome and if applicable the sentence	25	23	24 (57%)
The above information is provided by the end of the working day following the court hearing	5	15	10 (24%)

Based on assessment by the national NWNJ implementation team in 2006 and CJS areas’ own self assessments in October 2007 and April 2008.

²⁶ The NWNJ requirement is that all victims and witnesses will be notified of case outcomes. However the Victims’ Code (obligation 6.7) provides that WCUs must notify only vulnerable and intimidated victims of case outcomes and other victims of the sentence.

- 4.37 National performance in relation to the provision of information about court hearings and outcomes is still less than satisfactory. Timeliness of information provision remains challenging for most WCUs and there is a considerable way to go to meet the required standard.
- 4.38 Whilst performance varied across the areas visited, including between WCUs within areas, performance overall reflected the national picture. The extent of provision of information was seen to be steadily improving, although in some areas from a low base. We were told of many issues and concerns by WCU officers. For example at one unit not all Crown Court case hearing outcomes were notified to witnesses and only the witnesses that attended court were notified of the result. At another interim dates at both the magistrates' courts and Crown Court were not all communicated to witnesses. More positively though at another unit all witnesses were notified of hearings in the magistrates' courts. Meeting the timeliness requirements was proving very challenging in most units we visited.
- 4.39 Most WCU officers spoken to were highly committed to supporting witnesses and providing the best service they could, but this did not always mean that requirements and standards were met. At one site there was particular frustration that reduced staffing levels had meant the level of service previously supplied could no longer be maintained.
- 4.40 As was the case with needs assessments, we found that priority tended to be given to updating victims and vulnerable and intimidated witnesses. Even so, evidence from the file sample revealed shortcomings in the timeliness of providing information to these witnesses.

Table 4: File sample results in respect of timeliness of information provision to victims

File sample question	Yes	No	Unrecorded*	Applicable cases
Victims notified of requirement to give evidence within one working day of WCU receiving this information from CPS	35 74.5%	11 23.4%	1 2.1%	47
Victims notified of court hearing dates within one working day of WCU receiving this information from the court	18 34.6%	12 23.1%	22 42.3%	52
Victims informed whether special measures applications have been granted within one working day	2 33.3%	2 33.3%	2 33.3%	6
Victims informed of the outcome of the case and, where appropriate, given an explanation of any sentence	43 81.1%	7 13.2%	3 5.7%	53
Victims informed of the issue and execution of any warrants within one working day of the WCU receiving this information	1 50.0%	1 50.0%	0 0%	2

* No record could be found on the electronic and/or hard copy file.

- 4.41 A large majority of witnesses we spoke to (79 out of 90, 87.8%) considered they were kept well informed or fairly well informed about progress in their case prior to attendance at court. Considering that there was variable performance by the WCUs at the review sites, all the witnesses will have received differing levels of contact. However from the witness perspective, accepting that expectations and statutory standards are in place, it is clear that there is no one size fits all approach. Different victims and witnesses require differing levels of contact and what may be considered too much by one is insufficient for another. In the future further thought could be given to identifying and meeting the individual contact preferences of victims and witnesses in line with VWCDU guidance. We saw no evidence of this happening yet. From a criminal justice perspective there can be a tension between meeting individual needs (for instance if limited contact is desired) and maintaining the right level of contact to facilitate and ensure court attendance.

RECOMMENDATION 9

The joint Victim and Witness Care Delivery Unit should take steps to ensure that witness care units 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.

Information exchange with witness care units to enable timely updating of victims and witnesses

- 4.42 WCUs are very dependent on receiving relevant information promptly from a number of agencies in order to fulfil their responsibilities for keeping witnesses updated. Whilst units had established processes to receive hearing outcomes and other information, the effectiveness of these arrangements varied.
- 4.43 Some were experiencing difficulties with the timeliness of the receipt of hearing outcomes from both magistrates' courts and the Crown Court and on occasion failure to notify at all, for example, the results of special measures applications. Under the Victims' Code the courts have an obligation to provide information to WCUs, generally within one working day for vulnerable and intimidated victims and no later than three working days for other victims. However the time allowed for courts introduces permitted delay into the system and it is not feasible for WCUs to meet the minimum standard to provide this information to all witnesses by the end of the working day following the court hearing.
- 4.44 In practice WCUs measure their obligation from the time of receipt of the information. However this can be problematic in that witnesses can hear the outcome of a hearing before being formally notified by the WCU. Hypothetically a victim could discover by a chance encounter with a defendant who had been in custody that the case had been withdrawn. If the hearing occurred on a Friday, even if timescales were adhered to by both the court and the WCU it would still mean that the victim may not be notified until nearly a week later. This could be very distressing to the victim and is less than satisfactory.

- 4.45 Where the courts are not meeting their obligations as far as the timeliness of providing verified results is concerned, areas have had to find other ways of getting case outcome information to WCUs. Whilst ideally WCU officers should be able to rely on the CPS casework management system (CMS) as a source of outcome and sentencing information, in practice some WCUs do not use it and, indeed, sentences are not always recorded. This is largely due to delays in updating the system and updates being insufficiently detailed. One area also had concerns about the accuracy of outcome information recorded on CMS. A number of units rely instead on accessing the courts systems for outcome information including via LIBRA and Xhibit. This generally appears to work well although there were some concerns raised about limited operator licenses and time being wasted in repeatedly checking if the system had been updated given that it takes some time to access.
- 4.46 Many WCU officers expressed concerns that a lot of time could be wasted chasing information from agencies. More positively in one area where the CPS had introduced the optimum business model (a new way of organising the preparation of cases whereby lawyers and administrative staff work in dedicated teams), the timeliness of responses to queries was improving. However another area made the point that when staffing levels are short lawyers can be pulled away from such teams, which cuts across the potential benefits.

RECOMMENDATION 10

The joint Victim and Witness Care Delivery Unit should ensure that witness care unit (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.

- 4.47 WCU officers can find it more difficult to keep witnesses on board as time goes on, especially where there are delays and adjournments. At present officers are generally not able to tell witnesses the reason for any adjournment, only that their case has been adjourned, which can be frustrating for witnesses. In some cases knowing the reason for a delay may help the witness understand and maintain his or her commitment. As WCUs develop further it would be helpful for officers to be provided with more information on the reasons for any adjournments, which would assist them in keeping witnesses more fully updated and prevent unnecessary worry.

Responding to the differing needs of witnesses

Identifying differing needs

- 4.48 In the course of the individual needs assessments WCU officers should identify any language or communication requirements and medical or physical conditions and religious and cultural needs that may impact on availability for, and attendance at, court. Officers spoken with considered that they were generally able to address most of these issues. More difficult is the extent to which each officer was able to discuss and tease out the concerns and needs of the more vulnerable victims and witnesses or the more sensitive issues. External stakeholders highlight that certain witnesses, for instance those with mental health or learning difficulties, may be reluctant to disclose their disability due to concerns about how this might impact on the perception of their ability as witnesses. Witnesses may also perceive that there is stigma or

embarrassment attached to their need. This is particularly so around reading difficulties. Feedback to inspectors indicated that there can be an unwillingness to disclose reading difficulties particularly and therefore often late identification.

- 4.49 As reported earlier inspectors found some evidence of variable performance in the identification, and timeliness of identification, of witnesses with additional needs. Front line police officers were not in all instances recording relevant information about witnesses in this respect, for example medical conditions or disabilities, and this can on occasions go undetected by WCU officers. Witnesses who have brought a relevant medical condition or disability to the attention of police officers, or where a disability is clearly visible, may think this will have been noted and there is no need to raise it again. As contact between the WCU and witness is not face to face, unless the relevant information is provided by the police there is a danger that important issues may be missed or not identified until too late in the process.
- 4.50 Inspectors were told of or observed a number of instances that illustrated the difficulties that may be caused by delays in identification of special requirements. These included:
- One case involving a witness who used a wheelchair. This fact was not noted by police nor identified in the subsequent needs assessment. On the day of trial the wheelchair would not fit into the lift at the courthouse. As a result the witness had to get out of the wheelchair and get up the stairs in an undignified manner.
 - In one case observed a dyslexic witness was not identified as such until attendance at court when the witness pointed out they could not read their statement.
 - In another a young witness was only able to concentrate for short periods of time, which had not been properly identified.
 - In a further instance a hearing loop was found to be required in the courtroom, which had not been identified previously.
- 4.51 The ability of WCU officers to better understand and support witnesses, so that they have the confidence to disclose such matters, could be improved by more focused training; this was recognised by some of the unit officers spoken with and is discussed further at paragraphs 4.75-4.81.
- 4.52 WCUs are starting to provide more specialised services for certain categories of vulnerable victims and witnesses, which is to be encouraged. A number of the review sites had adopted or were beginning to introduce specialist WCU officers dedicated to dealing with specific categories of case such as domestic abuse and those with child witnesses. Managers and staff at these locations considered this to be working well, although this approach had not been formally evaluated.

Verbal and written communication with victims and witnesses

- 4.53 Inspectors found that arrangements were generally in place to communicate orally with witnesses who were not able to communicate effectively in English. WCUs used Language Line (a translation company) and also accessed interpreters; some had identified the various languages spoken by their own staff and were using them very effectively as interpreters. A number of WCUs had been alert to changes in local demographics and made changes to respond to these.

- 4.54 The position regarding written communication was less positive. Generally letters were not available in languages other than English. The exception was in North Wales where letters were routinely available in English and Welsh. In a number of areas inspectors were given examples of where, on occasions, letters had been translated in individual cases. Generally leaflets were not provided in languages other than English and Welsh. Although the Witness in Court leaflet is available in 11 other languages, little use was found to be made of this except in one area. The Going to Court DVD sent out to witnesses by some WCUs can also be played in a wide range of languages.

Case studies: One witness interviewed felt that he had struggled to deal with correspondence and communication. Whilst an interpreter had been provided at the trial, communication and correspondence during the lead up to the trial was all in English, a language in which he was not fully conversant. This had caused him concern and anxiety.

By contrast a case was observed which was concluded with guilty pleas on a basis which triggered a DCV letter to be drafted. The letter had been written and sent for translation into the specific dialect of the victim's language, because the victim had not attended at court.

- 4.55 Witnesses need to be supported to give their best evidence and consequently information and appropriate letters to those who are unable to communicate effectively in English are necessary. Generally there needs to be better consideration of the demographics within each criminal justice area to encourage a more systematic approach.
- 4.56 We found examples of facilities for deaf people including type talk and sign language being used. However larger font sizes, for those with sight difficulties, generally did not appear to be used much.

Support for children and young people

- 4.57 The Victims' Code specifies that certain categories of victims (where the relevant criminal conduct involves sex, violence or cruelty) under the age of 17 who are to be called as witnesses at criminal proceedings must be provided with the Young Witness information pack or equivalent. Inspectors found that whilst information was being sent to young witnesses, the content differed between WCUs and between individual WCU officers. There appeared to be no obvious rationale, with many officers unsure as to which of the various publications were best sent to different age groups. A clear approach needs to be adopted to the information that is sent and why, to ensure the needs of the children and young people are better met.
- 4.58 Most WCUs visited did not have any special arrangements in place for dealing with children and young people, except in London where there were specialist WCU officers available. Developing expertise within the units to deal with children and young people, and ensure appropriate support for them and their parents, is a positive move. Inspectors found in some instances specialist police staff rather than the WCU officers supported child witnesses. We referred earlier to the enhanced support available for vulnerable victims and witnesses from the Witness Service in some areas.

Case study: One young victim of a serious incident and parent had received a great deal of support from Victim Support, the WCU and the Witness Service in particular. The victim had received several home visits and seen the Going to Court DVD. The parent felt that whilst this was very helpful, there was perhaps too much support from differing sources with some overlap. In this case some streamlining and better communication could have ensured better utilisation of resources and avoided victims and witnesses feeling overwhelmed.

- 4.59 Court scheduling protocols generally prioritise vulnerable witnesses, including children, and practices such as arranging for child witnesses to attend court once the trial has commenced and any legal arguments have been dealt with are clearly beneficial. For instance in a number of areas Crown Court trials of over a day in length involving vulnerable witnesses were scheduled to start on the afternoon of the first day to help ensure any legal matters were resolved before child witnesses were called early on the second day. This also helped reduce waiting times for children and young people.
- 4.60 Such protocols reflect best practice from a particular perspective and have to be operated in the context of a range of wider considerations (see paragraph 4.62). Inspectors found some instances of cases involving child witnesses where their needs may not have been taken completely into account. For example the transfer of vulnerable child witnesses from one court to another location.

Case study: One case brought to the attention of the inspectors involved a 16 year old victim. A few days before the trial the case was moved from one Crown Court to another almost an hour away. The victim's mother expressed concern that she did not know how to get to the other court and refused to take him. The CPS made an application to the court to move the trial back to the original court. This was refused and resulted in police officers having to taxi the vulnerable victim and his mother to the court and back.

Scheduling of trials

- 4.61 Courts have guidance and protocols on listing practices that clearly describe how victim and witness issues are to be taken into account, however these are not always adhered to. For example we saw examples of the double listing of cases (where two trials are listed to be heard at the same time in the expectation that one may not go ahead) involving vulnerable victims and witnesses, in conflict with area protocols. We found many examples of witnesses waiting for long periods then being stood down and required to attend again on another day as a result.
- 4.62 While protocols exist they, and what they are designed to achieve, are in practice but one of the many factors that have to be taken into account when scheduling and re-scheduling trials. Other factors include the availability of witnesses, including police and expert witnesses, and all other parties involved in the proceedings; the likely length of the trial; other trials already listed on preferred dates; and the available court time, bearing in mind that the length of trials can rarely be predicted precisely. There may be occasions, therefore, when scheduling which causes a victim or witness inconvenience or anxiety is actually the best that can be achieved. The scheduling arrangements can also mean that the case is concluded more quickly, which may also be to the benefit of the victim or witness.

- 4.63 Nevertheless this review has shown that even in a study which involved comparatively few cases compared to the number of trials that are scheduled overall, the frequency with which the needs of victims and witnesses, some of whom are vulnerable, are not being met remains too high.
- 4.64 The recent National Audit Office report on the Administration of the Crown Court found that HMCS had not evaluated the overall impact of transfers between courthouses on, amongst others, victims and witnesses. We agree.

Witness availability and trial dates

Witness availability

- 4.65 A significant volume of WCU work relates to obtaining witness availability details and notifying witnesses of the requirement for them to attend trial. Initial contact with witnesses is often to obtain and/or update these details.
- 4.66 Inspectors were informed that trial dates can be set before the availability of witnesses has been established or where this information is incomplete or out of date. This can result in more inconvenience for witnesses as well as additional work for WCU officers, particularly when trial dates are not compatible with witness availability. Even where this information is available we found the needs of witnesses were not always taken fully into account by the agencies involved in the case. On occasions the needs of professional court users can take precedence over those of victims and witnesses and, whilst these are clearly important, they need to be balanced with the needs of victims and witnesses.

Magistrates' courts

- 4.67 In magistrates' courts' cases WCU officers update availability details, usually before the first hearing where this has been provided, or rely on the accuracy of information provided on the rear of the witness statement form, although when statements have been obtained several months before details were sometimes updated. Once the trial date is set officers contact witnesses to warn and confirm their availability.
- 4.68 The practice of setting the date of the trial at the first hearing and the reduction in the time period between the first hearing and trial as a result of Criminal Justice: Simple, Speedy, Summary has increased pressure on WCUs. Whilst this can lead to speedier justice, which is clearly positive for witnesses, not all WCUs are able to obtain and/or update availability prior to the first hearing, which means that trials may be set on dates that prove difficult for the witnesses. In cases where the prosecution and defence are not able to agree witnesses at the first hearing this can lead to provisional warning of witnesses and/or late notification of trial dates.

Crown Court

- 4.69 The practice of setting trial dates at the preliminary hearing had been introduced in a number of the areas we visited. This is serving to reduce the time from charge to case completion and brings positive benefits for witnesses who do not have to wait so long for their case to be heard and justice to be done. However it can also have a consequential negative impact on witnesses and WCUs which is not always planned for.

- 4.70 Full witness availability may not be accessible at an early stage and trial dates may be set which are subsequently found to be inconvenient for them. In cases involving multiple witnesses it may not be clear at such an early stage which of them will be needed and as a result a number of WCUs provisionally warn all witnesses. We have described above the competing factors which influence the setting of trial dates as well as the overall benefits of a speedy trial. This does not detract from the anxiety, and in some cases inconvenience, for witnesses who are subsequently not required. This situation can be exacerbated in areas where LWACs are not always completed or are late, or the trial date is listed very quickly after the plea and case management hearing. In such instances confirmation of provisional warnings and de-warnings can be very last minute. In one area visited on some occasions the WCU received no information at all about witnesses in advance of receiving the LWAC.
- 4.71 The volume of work created by ‘provisional’ warning can also be detrimental to the service WCUs are generally able to provide to witnesses. It creates additional work in terms of an increased number of people to warn, action taken on availability issues that may have to be progressed and subsequent de-warning of those not required. In addition witnesses may have required support which may not then be necessary; the extra work can impact negatively on the time available for, and quality of, other work undertaken including needs assessments. Whilst appreciating the need to reduce as far as possible the time to trial the routine use of provisional warning of witnesses is less than satisfactory. Where trial dates are set early in the process greater efforts are needed to obtain witness availability at the outset.
- 4.72 The use of the warned list by the Crown Court results in witnesses being on ‘standby’ and needing to be available for court over two week periods. The more serious or sensitive cases usually received a fixed trial date and inspectors were told that discussions on the suitability of cases for the warned list occurred, for example at Peterborough Crown Court where meetings took place between the court staff, CPS, WCU and Witness Service. Nevertheless the practice of warning witnesses to be on standby for long periods of time can be stressful for them. There is a need to balance the effective utilisation of courts and stricter operational use of the warned list to minimise where possible the length of time witnesses are on standby.

Case study: One witness interviewed had been provisionally warned for a full week commencing on a certain date. He worked full time and travelled for work. He had requested that if the case were to be listed during the week, that it was listed on any day but the Tuesday because he was working four hours travelling time away from the court area on that one day. He then received a telephone call from WCU at 4pm on the Monday evening stating the trial was listed the following day, Tuesday, and he was required to attend. This caused a great deal of inconvenience for this witness which could have been avoided by a fixed date being given much sooner.

Case progression

- 4.73 In most areas visited during this review we found a lack of effective multi-agency case progression meetings (where agencies meet together on a regular basis to ensure that all matters are trial ready so that the trial can go ahead on the planned day) for both the Crown Court and magistrates’ courts’ cases. We found that in some areas these regular meetings had ceased and no other effective method of progressing cases had been put in place. Additionally trial readiness certificates or their equivalent were not effectively used in many courts. A lack of effective case progression means that in practice many witnesses attend court unnecessarily. This is particularly felt in the magistrates’ courts because of the higher volume of trials.

- 4.74 During the course of this thematic review only 26 of the 70 trials observed (37.1%) were effective. One of the factors responsible was a lack of effective case progression.

Case studies: In one case observed two civilian witnesses had attended for the trial, an interpreter having been provided for one of them, only for the prosecutor to offer no evidence. There was no additional evidence on the morning of the trial. The prosecutor clearly felt there was insufficient evidence to go to trial but the decision should have been made earlier and a full review carried out with effective case progression to avoid this situation arising. A lack of case progression and thorough review could have prevented these two witnesses being inconvenienced.

A serious robbery case observed in one area involving seven witnesses, listed for its second trial date had to be adjourned after the jury had to be discharged. It is now for trial in another three months' time but is not listed as a fixture. This will be the third time that the seven witnesses have been required to attend. Adding to the inconvenience caused to the witnesses it was not clear at that stage which of two Crown Court centres, some distance apart, the trial would be heard at.

One high profile case observed was listed for a full day on its second trial date. Evidential issues over a DVD compilation which was served late on the defence resulted in an application to vacate the trial so they could view the whole DVD. This had clearly not been effectively dealt with and managed under any case progression regime and resulted in the wasted attendance at court of two witnesses who were then required to attend on a third occasion.

RECOMMENDATION 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.

Developing and improving the service provided to victims and witnesses

Training and development

- 4.75 A minimum requirement of NWNJ was that all front line staff, including WCU officers, should be provided with appropriate training. However since the introduction of the WCUs there has been significant staff turnover and subsequent training of new officers been neither thorough or extensive.
- 4.76 Initial NWNJ guidance recommended training that should be undertaken locally. Local police or CPS managers decide what training should be provided and this has led to variable and in some instances less than satisfactory provision, with an absence of structured formalised training to ensure WCU officers are fully equipped to undertake their responsibilities.

- 4.77 When WCUs were first established specific off job training was generally provided for WCU officers, although the quality of this varied across areas. Since then there is a greater reliance on new officers learning how to undertake the role through on the job training and listening to others. The need for officers to have a sound understanding of how to discuss and tease out the various concerns and needs of the more vulnerable and intimidated victims, who may for example be worried about their credibility or concerned about the impact of a disability, is reported earlier. Officers interviewed recognised that training in the ‘softer’ communication skills would be beneficial, they felt their role was at times often akin to that of social or support workers. Some had received training in handling victims and witnesses in sensitive cases such as domestic abuse and had received information about such developments as the introduction of Criminal Justice: Simple, Speedy, Summary; others had not.
- 4.78 Victims of domestic abuse are frequently supported by specialist police officers who are also responsible for risk management of the cases. However many such victims are also supported by WCU officers. In such cases we found no evidence of risk management training for officers and limited evidence of joint arrangements for managing risk. This issue had been recognised by the VWCDU and training for managers is planned. It will be important that this is extended in due course to WCU officers handling such cases.
- 4.79 WCU officers also have to deal with anger and aggression when witnesses feel they have been let down by the system, such as in the sentencing of the defendant. There is need for training to deal with confrontation, potentially as part of customer service skills training.
- 4.80 Some of the matters that are disclosed by witnesses can be stressful not only for them but also for the WCU officers. We found examples of officers feeling ill equipped to deal with matters - one example was given of a witness threatening to commit suicide whilst on the phone. CPS staff based in the WCUs can access counselling and support through Care First, an independent counselling and support service freely available to all CPS staff 24 hours a day, seven days a week. However the majority of WCU officers are police staff and, although every force has in place welfare and counselling support, accessing individual tailored support at WCU level appeared more difficult.

RECOMMENDATION 12

The joint Victim and Witness Care Delivery Unit should ensure that:

- witness care units (WCUs) review their current 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 the police and CPS should ensure that WCU staff are aware of the counselling services available to support them in their role.
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- 4.81 Training for witness care managers has recently been provided by the VWCDU, building on skills development provided at the witness care managers conference. The course aimed to highlight skills and areas for development to improve WCU performance and share good practice.

5 SUPPORT PROVIDED FOR VICTIMS AND WITNESSES AT COURT

Support services available to victims and witnesses in the courthouse and during the trial

Witness Service

- 5.1 The main support available to victims and witnesses at court is provided by the Witness Service. This is a service provided by Victim Support, a national charity. Witness Service staff and volunteers provide support to witnesses at court during the course of a trial. The Crown Court Witness Service was launched in 1994 and by 1996 was offering support to witnesses in all Crown Courts in England and Wales. By 2003 this service had extended to include all magistrates' courts in England and Wales.
- 5.2 Inspectors found that prosecution witnesses are very well supported by the Witness Service. In most areas visited the relevant criminal justice agencies and Witness Service worked well together to ensure witnesses are referred to the Service and well supported on the day. In order to do its job effectively the Witness Service relies on the CPS and WCUs for advance notification of prosecution witnesses expected. We were told that the level of referrals is generally improving although the timeliness of referrals could be better in many cases, especially when there are special requirements.
- 5.3 A vital source of information is the formal list of witnesses warned to attend court produced by the CPS. These were usually made available to the Witness Service but this was by no means universal. The Witness Service was also not always made aware of the special needs of witnesses, for instance in respect of disabilities. The early notification of special needs enables the Witness Service to be better prepared to provide support and, where appropriate, ensure that volunteers with the requisite skills are available.
- 5.4 Defence witnesses were not so well supported; rarely were they referred in advance to the Witness Service. In some courts defence witnesses who identified themselves upon arrival at court were directed to the Witness Service by court staff, but this was not the case in all courthouses. This is despite some good work to promote the work of the Witness Service to defence solicitors. For example the Service had sent information on what it can provide to all defence solicitors practising in one area, to which it had received very limited response.

Court staff

- 5.5 Court staff also have responsibilities for supporting witnesses and ensuring that they are given any assistance they need during the trial. This includes defence witnesses when identified.
- 5.6 HMICA undertook a series of inspections of services to victims and witnesses culminating in a national overview report making a number of recommendations. This was published in 2006²⁷ and HMCS subsequently developed an action plan in response. As part of this HMCS introduced a number of initiatives including area based witness champions, court based witness liaison officers and a handbook for staff, *Every Witness Matters*.

27 Valuing victims and witnesses. An overview of inspections undertaken in 2005, HMICA, March 2006.

- 5.7 The purpose of area witness champions is to provide a link from the national Witnesses: Improved Services Programme²⁸ and oversee implementation of victim and witness initiatives at the area level. These individuals are clearly active at the strategic level in each HMCS area and often work in partnership with other agencies. In recent years HMCS has run an annual conference for witness champions at which key issues and good practice are discussed. This was seen to have been helpful in promoting witness issues at this level.
- 5.8 The court based witness liaison officers are responsible for providing a dedicated point of contact and information for all witnesses to try to ensure that they are, and feel, safe, informed, valued and appreciated. However inspectors found in most areas visited that liaison officers were unclear about their role and tended to pass any witness issues to the Witness Service for resolution. This was despite the Every Witness Matters handbook being developed by HMCS to help officers in carrying out their roles. There was a lack of awareness amongst HMCS staff of the handbook and the roles of both the witness champion and liaison officer despite these good initiatives being championed and driven from the centre. Others working in the courts were similarly unaware of these roles.

ASPECT FOR IMPROVEMENT

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.

Arrival at court

Reception arrangements

- 5.9 Finding and entering the courthouse can be an anxious time for victims and witnesses, particularly when they inadvertently come into contact with the defendant in their case and his or her supporters.
- 5.10 Some witnesses we spoke to told us that they were concerned for their safety and felt nervous when entering the courthouse (see also paragraph 5.62). The universal provision of separate entrances for witnesses would undoubtedly have significant resource implications and would make general security more difficult. Of the 14 courts visited as part of this review only one provided a separate entrance for all witnesses. Whilst it is not HMCS policy to provide a separate entrance for witnesses, issues of witness security and confidence should ideally be considered on a court by court basis taking into account the individual circumstances and locality.
- 5.11 Arrangements were in place in all courthouses visited for victims and witnesses identified in advance as vulnerable and intimidated to access through a separate entrance in order to reduce their anxieties and the risk of intimidation.
- 5.12 We found that insufficient thought is generally given to the reception arrangements for victims and witnesses. In many cases there is a lack of advance information and/or signage at the courthouse entrance indicating where victims and witnesses should go on arrival, with

28 Witness Improved Services Programme - inter-agency consultative group and a working group to work with Victim and Witness Branch of HMCS to devise policy and help implement it.

witnesses often being reliant upon security guards to direct them. As a result many end up queuing at the reception desk with other court users which increases the likelihood of them coming into contact with the defendant in their case and his or her supporters. A number of witnesses we spoke to mentioned this aspect as a concern for them. In the one courthouse where a discrete separate entrance leading directly to the Witness Service suite had opened a few months previously most witnesses were still entering via the main entrance where they queued at the main reception desk with other court users. Lack of advance communication to witnesses had led to a good initiative being overlooked.

- 5.13 In some courts defence witnesses who identified themselves upon arrival at court were directed to the Witness Service by court staff, but this was by no means the case in all courthouses.

Waiting to give evidence

Waiting facilities

- 5.14 The Witness Charter commits HMCS to provide separate waiting areas for prosecution and defence witnesses (including where possible for family and friends) and, where a separate area is not available, for arrangements to be made to enable witnesses to wait separately from other parties and their witnesses and supporters.
- 5.15 Nearly all courthouses have a separate waiting area for witnesses and most were able to offer a number of rooms when required, for example for prosecution and defence witnesses. However in one Crown Court separate facilities were only available for vulnerable and intimidated witnesses, other witnesses being required to wait in public areas. As witnesses could potentially choose to wait in a public area some way from the courtroom in which their case was being heard, the court considered that it was achieving the necessary separation. In the absence of strong security presence inspectors consider that this is not the standard of separation required.
- 5.16 In most courthouses witness waiting areas are located in secure areas, however in several this was not the case. As a security measure most have removed witness waiting room signs from the doors. However inspectors noted that one courthouse visited during this inspection still had such signs in place despite the waiting room being in a public area. Effectively signposting the whereabouts of witnesses can potentially increase the risk of intimidation. The same court had glass panels in the waiting room door providing a clear view of witnesses.
- 5.17 In all courthouses witnesses who smoke were required to do so outside the building in line with current legislation. However in many instances the court could not offer a secure outside area for smokers. As a result witnesses stood outside the front of the court house alongside other court users, including defendants, where the risk of intimidation was very high. Inspectors witnessed unruly and potentially intimidating behaviour outside the front of one courthouse and in one area a senior court official told inspectors of a case where a witness who was outside the court smoking was attacked by the relative of a defendant. We interviewed a number of witnesses who felt intimidated by having to smoke outside. Security guards do not usually patrol frequently the outside of court buildings and therefore these areas should be considered vulnerable for witnesses to be unaccompanied and should be subject to appropriate risk assessment by court managers.
- 5.18 The large majority of witnesses we spoke to (86 of 90 - 95.6%) told us they were comfortable with the facilities when waiting.

Refreshments

- 5.19 The vast majority of witnesses we interviewed (84 of 90 - 93.3%) considered that arrangements for refreshments in courthouses were acceptable. Some, however, expressed concerns that refreshment facilities were in public areas of the court, where they might meet the defendant or their supporters and two witnesses made the point that they had waited over two hours before being offered a drink.
- 5.20 The provision of refreshments at courthouses is variable. Whilst Crown Court centres visited offered cafeteria facilities these were not generally open beyond 2.00pm. There was more mixed provision at magistrates' courts with drink/snack machines being the minimum provided through to snack bars run by local charities. The Witness Service sometimes provides hot and cold drinks within the witness waiting area, but this is not the case in all courthouses. One area visited provided witnesses with information on local places to eat which was helpful. This information is not currently provided in the standard leaflets about individual courts and may be a useful addition where refreshment provision in the courthouse is limited.

Waiting times

- 5.21 Waiting times on the day continue to be too long for a large proportion of witnesses. It is not always possible to estimate the precise time a witness may be called and timings can be subject to legitimate events on the day. However long waiting times can also be due to poor planning on behalf of the courts or CPS and the fact that witnesses and what is happening to them are not always a sufficiently high priority.

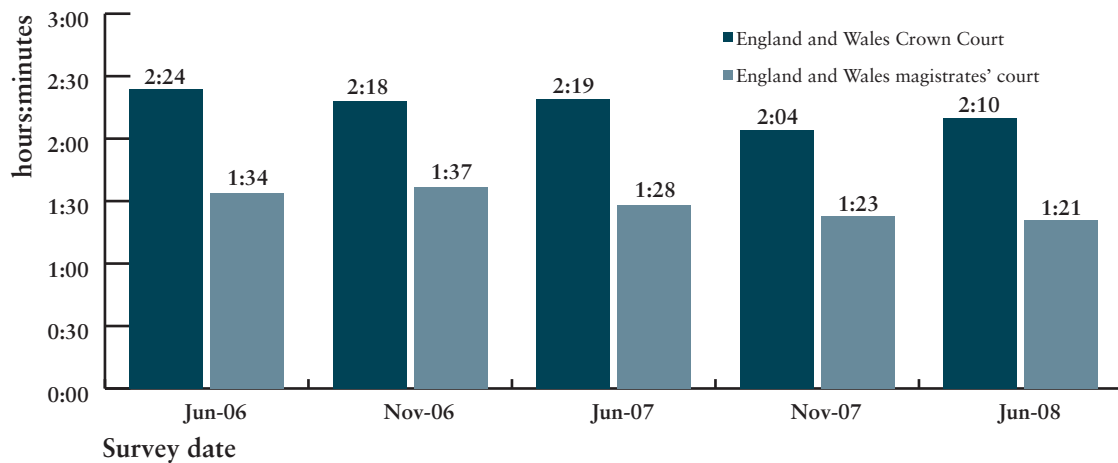
At Merseyside Crown Court trials involving vulnerable witnesses were generally scheduled to start in the afternoon with the vulnerable witness required to attend on the morning of the second day when they were usually called first. This has substantially reduced waiting times for this group of witnesses.

- 5.22 Inspectors saw some innovative practices aimed at reducing waiting times, but these were more the exception than the rule. Limited staggering of witness arrival times was seen or the releasing of witnesses to return to court when required instead of waiting at the court. In the case of the latter the Witness Service contact witnesses by mobile phone when it is time for them to give evidence.
- 5.23 In every courthouse we visited staff who supported witnesses expressed concern over the time they have to wait. Similarly many witnesses interviewed expressed concern about waiting time. Witnesses often arrive at court with the perception that the time they are given to attend is the time they will be called to give evidence and this is frequently not the case. Information provided to witnesses frequently repeats the Witness Charter commitment that the aim is that they should wait no longer than one hour in the magistrates' courts and two hours in the Crown Court. Witnesses often take these times literally and arrange their attendance around them.
- 5.24 During this inspection we spoke to 52 witnesses in the magistrates' courts and 39 in the Crown Court. Average waiting times for them were 1 hour 10 minutes in magistrates' courts and 3 hours 46 minutes in the Crown Court. The longest waiting times tended to be in the larger urban areas.

5.25 Waiting time targets for magistrates' courts (revised since June 2007) are that 60% of witnesses should not wait more than one hour, 80% should not wait more than two hours and the average waiting time should not exceed 1.5 hours. In the Crown Court the target is that 60% of witnesses should not wait more than two hours and the average waiting time should not exceed 2.5 hours. The firm commitment given about witness waiting times in the Witness Charter is supported by generic courts charters²⁹ for the magistrates' and Crown Court respectively. These state "You shouldn't have to wait more than one/two hours from the time you are asked to attend to when you are called to give evidence". The targets adopted demonstrate an acceptance that the average wait can be above the Charter commitments and that 40% of witnesses can wait longer than the commitment. Inspectors question whether the targets adopted ensure that the Charter commitments are met.

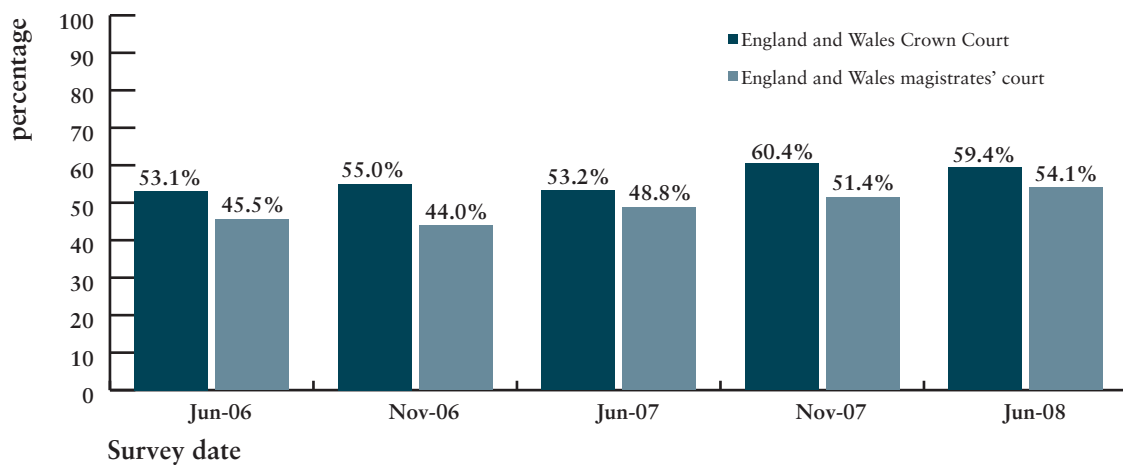
5.26 Data on witness waiting times is collected twice a year by HMCS in a national witness monitoring survey.

Table 5: Average witness waiting times



Source: HMCS six monthly waiting time performance data

Table 6: Percentage of witnesses in the Crown Court waiting less than two hours and in the magistrates' court less than one hour



Source: HMCS six monthly waiting time performance data

29 Public information leaflets which set out standards of service including for waiting times.

- 5.27 Whilst the data above indicates that performance is improving, it is not wholly accurate. We were concerned to discover that guidance issued to HMCS staff (from June 2007) about conducting the national survey stated that “if a witness is warned to attend court at 10.30 for an 11.00 scheduled hearing and the witness attends at 10.30, the waiting time would start at 11.00”. This is a distortion of the data. Waiting times should be measured from the time the witness is required to attend court. In addition the survey period is quite short (two weeks in June and November each year) and as a result some sample sizes are small, in some courts as small as eight witnesses. Also some courts during each survey do not collect data for a number of reasons.³⁰
- 5.28 The Witness Charter, currently in the process of being implemented, sets out challenging standards for waiting times. These are that witnesses in the magistrates’ courts should wait no longer than an hour and in the Crown Court no longer than two hours. Particular care should be taken to keep waiting times for young witnesses to a minimum. There appears to be a general awareness that action needs to be taken to minimise waiting times, but as yet there is limited evidence of any practical steps being taken. However work was in hand by HMCS to analyse waiting times in the Crown Court with a view to identifying good practice at its Area Witness Champion Conference in early 2009.

ASPECTS FOR IMPROVEMENT

HMCS should ensure that:

- HMCS areas work closely with other agencies to reduce witness waiting times and meet the standards set out in the Witness Charter; and
 - waiting times are recorded accurately to reflect the time witnesses are asked to attend court.
-

Keeping witnesses updated about the progress of their case

- 5.29 We found that prosecution witnesses are usually kept well informed about the progress of the case on the day by the Witness Service and/or ushers and the prosecution. Reasons for delays and adjournments are often explained to witnesses by the prosecutor, advocate or caseworker and, importantly, we found that where a trial did not go ahead and witnesses were not needed that they were usually thanked for coming to court, either by the advocate (in the Crown Court) or magistrates themselves. All but one of the witnesses we spoke to felt they were kept very well or fairly well informed of progress in their case while waiting.

Liverpool Crown Court has an Xhibit screen situated in the reception area of the witness waiting suite ensuring that the Witness Service, and therefore witnesses, are kept up to date with the progress of their case at all times in the proceedings.

- 5.30 Defence witnesses are reliant on defence solicitors to update them as to the progress of their case. However we found no evidence to assess the extent to which this is done. This may be an acceptance of the current situation but inspectors consider that HMCS has a duty to keep all parties informed. HMICA said this in its thematic report referred to earlier. It is acknowledged

30 There are instances where a return for an individual courts are not made such as:
i) nil return as no trials will have taken place in the survey period;
ii) court closed for that survey period;
iii) the survey is included within another local justice area; or
iv) the survey period clashed with other work pressures which meant it was not possible.

that this can be difficult when court staff are not made aware of the presence of a defence witness, for example where witnesses have not identified themselves on arrival. Further thought needs to be given, in liaison with defence solicitors, to encouraging defence witnesses to make themselves known to court staff on arrival.

In the courtroom

Treatment by prosecutors at court

- 5.31 The Prosecutors' Pledge was launched in October 2005. It sets out the level of service that victims can expect from both CPS prosecutors and solicitor and barrister agents instructed by the CPS, including within the court. For instance prosecutors are required to assist victims at court to refresh their memory from their written evidence or video statement and answer any questions about court procedures, encourage two way communication with the victim and protect the victim from unwarranted or irrelevant attacks on their character.
- 5.32 Levels of compliance with the Pledge were observed to vary. CPS in-house prosecutors were generally seen to comply with its expectations better than barrister agents. A member of the judiciary commented that barristers historically had limited interaction with victims and witnesses and, although this is changing, some still have less involvement with witnesses.
- 5.33 In total 67 of 83 (80.7%) witnesses interviewed told us that prosecutors had introduced themselves prior to the start of the trial.

Case study: The impact of failure to act in accordance with the Prosecutors' Pledge was clearly felt by one witness interviewed at court. The prosecutor in this case had not been to see the witness or introduced himself before the trial. The witness commented that when she entered the court room to give her evidence the only person in the room that she knew was the defendant.

- 5.34 Compliance with the Pledge is especially critical when there are vulnerable or intimidated witnesses, particularly where they are appearing over a live video link. It is vital in such cases that the prosecutor meets the witnesses beforehand to check they understand what will happen.

Case study: One case was observed where a prosecutor introduced himself for the first time to two young witnesses appearing on a live video link. The mother of the children who was present in court told the inspector that she was concerned that the prosecutor, having not met the children, would not realise that one of them had learning difficulties.

- 5.35 Whilst compliance by CPS prosecutors was generally found to be good, this was not the case in all trials observed. It is important that CPS managers remain vigilant to avoid instances such as those highlighted above. Training for CPS prosecutors should regularly stress the importance of the Pledge and monitoring of prosecutors should include specific reference to performance in relation to it.

- 5.36 Training for solicitors and barristers who are instructed to act for the prosecution does not always include specific training on the Prosecutors' Pledge and the need for compliance, nor does monitoring always address this issue specifically.

ASPECT FOR IMPROVEMENT

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.

Availability of special measures in the courtroom

- 5.37 As explained earlier (paragraph 3.13) there are a number of special measures that may be applied for to help vulnerable and intimidated witnesses give their best evidence. All courthouses visited were able to provide the full range of special measures although not always in every courtroom. This can cause difficulties in the absence of careful planning both as to facilities and their use in the context of individual cases. For example in one magistrates' court visited a video link was only available in the youth courts, which meant that cases involving adults giving evidence by video link needed to be heard in another courthouse. Where special measures are not properly planned for this could cause delays.
- 5.38 The quality of special measures equipment was variable. Video link equipment ranged from old technology which was not always reliable, to new state of the art which should be reliable but where relevant staff were not trained to use it correctly. As a result proceedings were frequently delayed and witness waiting times on the day increased.
- 5.39 Many witnesses who give their evidence by live video link are not aware in advance of the trial that they will be visible to all in the courtroom. This has caused upset and difficulties on the day for many of these witnesses and parents in the case of child witnesses. As noted earlier it is important for witnesses to be given the full and correct information from the start.
- 5.40 At one Crown Court large (50"/1.27m) plasma screens are used in courtrooms for evidence given by live link and for playing back the police interview. The view provided of the witness in court is much clearer and there is local evidence that suggests witness testimony is better received and conviction rates are higher than for the normal sized TV link screens. At the same time some victims and witnesses and their families, particularly parents of young witnesses, have been alarmed by the large images and have often needed persuasion to continue.
- 5.41 The use of remote video links (where a link is available with the court from another location outside of the courthouse) is not a frequent occurrence although is considered when a witness is overseas, for example. In the last 12 months remote video links have been arranged in approximately 100 cases. HMCS security guidance issued in April 2008 suggests that consideration be given to the use of remote video link "where it has been decided that a vulnerable or intimidated witness is to give evidence by live link". The use of remote links is not considered often enough where witnesses are infirm through age, disability or medical problems.

Case study: We were given an excellent example of how effective such links can be in certain circumstances. In this instance the person was a key witness in a serious case. They had multiple medical problems and suffered with agoraphobia. All agencies worked well together to ensure the appropriate equipment and personnel were in place for the witness to give their evidence over a remote link set up in their home.

- 5.42 Screening is available at courts to protect the witness from seeing the defendant and being seen and range from curtaining surrounding the witness box to purpose made wheeled screens, both of which are effective. However some courts are using heavy notice board type screening which is often insufficient and not easy to set up. Some courtrooms do not lend themselves easily to the screening of witnesses, although court staff make good efforts to ensure that screening is available and works on the day. In such circumstances it should be possible to hold the hearing in a more appropriate courtroom; inspectors found that this option had often not been considered. In one Crown Court we saw screens that were not fit for purpose being used in a serious kidnap and rape case. In another court we saw very good use of curtains being used flexibly to effectively screen parts of the court according to the needs of the case.
- 5.43 A complication associated with screening is that in some courts, depending on their layout, it may be necessary to remove the accused from court before a witness can be brought into the courtroom, otherwise the objective of the exercise is defeated. Generally we found practitioners alert to this.
- 5.44 There was uncertainty on the part of those involved in the special measures process whether a witness giving evidence by live link can also have the monitor on which they appear in the courtroom screened in order that the defendant is unable to see him or her if there is good reason for this.
- 5.45 At the time of our inspection the use of witness intermediaries to assist vulnerable witnesses give their best evidence had only recently completed roll out and we saw no cases where intermediaries were used. Areas visited reported that this initiative was working well, although numbers of intermediaries used to date was generally low.

Technology issues

- 5.46 Most courthouses visited during this inspection were experiencing significant problems because of the incompatibility of evidence DVDs provided by the police with court equipment. This had been mitigated to some extent in some areas by the police or CPS providing a compatible laptop computer for use in the court. However in some cases the laptop was also incompatible with court equipment which meant that the evidence could not be viewed on a larger screen or multiple screens and so was difficult to view in the courtroom. This was causing delays and inconvenience for all parties including victims and witnesses.

Case studies: One case observed, which was a serious matter, involved three vulnerable and intimidated witnesses who were children aged 12 to 14. On the morning of the trial it was observed that the DVDs would not play on the equipment in the designated court room and the case had to be moved to a different court room causing a delay in the case starting. This was very unfortunate as these children had to wait most of the morning before the case commenced.

In the magistrates' courts a case was observed in which the prosecutor offered no evidence because a DVD of CCTV footage could not be played on court equipment.

Specific support for children and young victims and witnesses

- 5.47 Children and young people who are witnesses and their parents or guardians are usually well supported on the day by the Witness Service and other support agencies. In most courthouses Witness Service staff and volunteers accompany young witnesses in the video link room while they give their evidence. In some courts, however, court ushers still carry out this role and inspectors found that in most instances ushers are not adequately trained to support young people. A recommendation from HMICA's inspection report Valuing Victims and Witnesses in 2006 was that HMCS ensure that those supporting children or young witnesses at court, particularly when giving evidence by video link, are suitably trained and vetted.
- 5.48 HMCS has since checked all ushers with the Criminal Records Bureau and carried out a review of their training needs. Notwithstanding this inspectors found that ushers still feel inadequately trained and tend to use their general experience to try and do a good job. However the level and type of support young witnesses require should not be underestimated. Anyone involved in providing such support should receive an adequate level of training to ensure they have a good understanding of the needs of vulnerable young people and how they are best looked after in what can be a stressful situation, and to ensure both the security of the young person and the supporter.
- 5.49 In certain circumstances parents or guardians may accompany young witnesses in the video link room when they are giving evidence, but this is at the discretion of the judge and will depend on the circumstances of the case and whether he or she considers it appropriate. It is important that those having contact in advance with the young people and their families make clear the possibility that this may be restricted at the time they are asked to consent to their child being interviewed so that they can make a properly informed decision.

Case study: In one trial observed the parents of a number of young witnesses maintained that they had been informed earlier in the process that they could be present in the video link room whilst their child gave evidence. When they were told this was not the case they threatened to withdraw their children from the case, which placed the court in a difficult position. In the circumstances the court agreed that parents of each of the witnesses could accompany them.

- 5.50 When a witness has given their evidence they cannot wait with other witnesses who have yet to do so because it would be inappropriate for witnesses to speak to each other and risk contamination of evidence. We found instances where the court and or prosecutor did not appear to have considered the impact on children in such circumstances. Such cases have a greater impact on children, who often are separated from the rest of their family.

Case study: In one case observed a parent attended court with two young children who were siblings for all three of them to give evidence in a sexual abuse case. The court heard the evidence from Child A and then at approximately 12:30 commenced hearing the evidence of Child B. At 1:00 the court adjourned for lunch. At the lunch break all three witnesses had to be kept separate from each other. Child A had completed their evidence. Child B was in the process of giving evidence and the mother would be giving evidence later. This was practically quite difficult for the Witness Service to arrange because of the lack of staff and rooms available. It was stressful for the witnesses. With some thought the case could have been listed with an earlier start or the court could have considered breaking for lunch early to avoid Child B being part heard. If Child B had not been part heard she could have remained with her mother over the lunch adjournment.

- 5.51 Facilities for children, although varied, were found to be generally satisfactory. Inspectors saw separate child friendly waiting rooms in all courthouses.

Wolverhampton Crown Court had held a children's day when a number of children and young people aged from 7-15 were invited to give their views on the facilities for witnesses of their own age. Helpful comments were made about the decoration of the family waiting room, the availability of toys and the canteen menu, leading to improvements being made. A grant to assist towards costs of this initiative was obtained from the National Lottery.

Waiting facilities for families

- 5.52 HMCS has recently asked court staff to be proactive in relation to providing separate seating and waiting facilities for bereaved families of victims. This follows a high profile murder case where the victim's family felt insufficient care was afforded them as regards their seating and waiting arrangements. In order to hear the case they had to sit in the public gallery with the defendant's family which they found difficult. The family questioned the appropriateness of this arrangement for those in similar positions to themselves. The publication of *Engaging Communities in Fighting Crime in 2008*³¹ recommended that "the Court Service introduce arrangements to ensure separate seating arrangements for victims' families attending court" and an obligation is also placed on HMCS in the Victims' Code.³² HMCS reminds court staff working with the WCU and/or police and Witness Service to be proactive in ascertaining the needs of victims and their families well in advance of the trial date in order to plan seating arrangements and to review any procedures in place for allowing this. This request was issued in August 2008, one month before the fieldwork of this inspection.

31 *Engaging Communities in Fighting Crime*. L Casey, Government's Respect Task Force, 2008.

32 Obligation 8.4 – Court staff must ensure that, where possible, at criminal proceedings in respect of relevant criminal conduct victims have and are directed to a separate waiting area and a seat in the courtroom away from the defendant's family and friends.

5.53 In all cases we found that victims and their families were able to wait separately from the defendant and their family or supporters. In the courtroom HMCS will make every effort to seat victims and their families in the well of the court and apart from the family or supporters of the defendant. However it was also clear that where the court is constrained by layout or size sometimes insufficient thought is given to how obstacles might be overcome.

Responding to the differing needs of victims and witnesses during the trial

5.54 The needs of most witnesses with disabilities are usually met. Although not all courthouses are fully accessible, cases involving witnesses with mobility difficulties (if known in advance) are scheduled in an accessible courthouse or courtroom. This may on occasions require additional travelling for a witness. Despite there being potential mechanisms to identify any such needs of defence witnesses in advance, this does not always happen. Hearing loops are available in all courthouses although not necessarily in each courtroom.

5.55 There is a general lack of training and awareness amongst staff on how to deal with witnesses with learning difficulties or mental health issues. In one courthouse an usher was observed supporting a witness with learning difficulties in the video link room and, although the witness managed very well, the usher did not feel sufficiently trained to deal effectively with their needs during the hearing. In one court social services were present and supporting their clients very well.

5.56 Inspectors found excellent interpreter arrangements in all courts visited as part of this review. Interpreters are readily available for trials and meet the needs of those for whom English is not a first language.

5.57 Most Crown Court centres provide prayer or contemplation rooms. However the quality is variable with some being merely a bare and empty room and others being suitably decorated, furnished and stocked with appropriately kept holy books. One courthouse visited had provided an excellent room but holy books were not appropriately stored (although those in the courtrooms were covered and stored properly).

5.58 Following HMICA's inspection of services to victims and witnesses in 2006 HMCS undertook to review oath taking procedures to identify any training needs. The majority of court staff had already received some diversity training and oath taking procedures have been revised.

5.59 All courts visited provided a range of holy books for use in the courtroom which were appropriately kept, usually in colour coded wraps. Most courts provided guidance to ushers on appropriate oaths and affirmations. However inspectors found a mixed picture in relation to how oaths/affirmations were administered. In some cases ushers always employed 'repeat after me' as standard procedure, which is considered good practice in not disadvantaging any witnesses who may have reading or sight difficulties. In other cases court staff made assumptions about holy book preferences and stereotyped cultural and religious preferences; this was a clear indicator that diversity training requires updating.

Case studies: One witness interviewed said that she had not realised that she would be required to read her statement and oath and had not brought her reading glasses with her which caused difficulty and embarrassment.

We were told of another case where a witness who had attended court was found not to be able to read; this had not been picked up earlier.

ASPECT FOR IMPROVEMENT

HMCS and CPS areas should ensure that:

- 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;³³ and
 - diversity training, particularly for front line court staff, is regularly updated and developed.
-

5.60 Signage in some courts is very good, clearly taking into account guidance on colouration of signs and wording for those with limited sight, and providing the same in Braille. However in areas with large minority ethnic populations we saw little effort to provide signage or directions in different languages.

5.61 Despite HMCS having made immense strides in the quality of information provided the diverse needs of victims and witnesses were often not catered for; written information still tended to be in English only despite the ethnic mix within an area. The You are a Prosecution Witness and You are a Defence Witness leaflets are available in ten languages, but we saw little evidence that this is provided for or made known to witnesses who are unable to communicate effectively in English.

ASPECT FOR IMPROVEMENT

HMCS areas should ensure that the diversity of the local area is better reflected in the information available to witnesses in the courthouse.

Managing the safety of victims and witnesses

5.62 Attending court can be a stressful time for victims and witnesses, some of whom may have concerns about their safety. Whilst 75 of the 90 witnesses (83.3%) interviewed felt safe in the courthouse, it was worrying that 15 (16.7%) did not feel safe in or in the vicinity of a court of law. Many made the point that it was when accessing the courthouse and entering the building that they felt most concerned. A number referred to having seen the defendant and their supporters and found this intimidating. Once in the building and in the witness waiting area witnesses generally felt safer, apart from when walking thorough public areas. Inspectors accept that much is done to protect victims and witnesses from potential intimidation within the court precincts. This is laudable but no substitute for robust steps on the part of HMCS areas to ensure that court buildings provide a safe environment where victims and witnesses may come in search of justice confident of their own security.

33 Also a recommendation in HMICA's thematic inspection of Youth Courts in 2007.

- 5.63 Whilst there is a risk assessment process in place for category A trials (which involve the most serious crimes) there is generally poor risk assessment of cases. Agencies do not always share risk based knowledge with each other in relation to any cases apart from the most serious. Effective risk assessment of cases is important and has a direct impact on the safety and security of witnesses, whilst at the court and during the life of the case. Where there has been effective risk assessment procedures can be put in place to minimise the risk to witnesses, the public and court staff. For example we observed the use of security archways (staffed by police officers) at a courtroom entrance during a case that involved a serious level of violence.

RECOMMENDATION 13

HMCS should ensure that:

- facilities are being properly risk assessed by ensuring that relevant staff have the ability and training to carry out that function; and
 - appropriate liaison 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.
-

- 5.64 Inspectors observed variable entry search procedures that were often insufficient, sometimes with no more than a glance into a bag or package. Security arches were not all in obvious working order and in some cases when the alarm sounded the resulting search was inadequate.
- 5.65 HMCS have recently introduced revised security guidance on the management of victims and witnesses at court as part of their Safe and Secure Guidance, however there was limited evidence of awareness of this amongst front line staff.

ASPECT FOR IMPROVEMENT

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.

Managing performance in the courts

- 5.66 Many front line court staff had received customer service training and HMCS is working hard to embed the customer service ethos throughout the service, for example by circulating the Every Witness Matters staff handbook, although not all relevant staff were aware of the contents.
- 5.67 As reported above, waiting times are too long. Most front line court and Witness Service staff are not aware of the outcomes of the national waiting time survey and are insufficiently aware of performance, issues and targets in this particular area.
- 5.68 In addition to witness waiting times HMCS, both at magistrates' courts and Crown Court levels, works to targets and monitors performance on other measures that impact on victims and witnesses, both nationally and locally. These include levels of effective, cracked and ineffective trials and the reasons for this, providing courts results within agreed timescales (magistrates' court registers) and the timeliness from charge to completion (magistrates'

courts) or committal to disposal (Crown Court). Court staff tended to be aware of the targets and performance in their own particular area of work, but were not always aware of the wider picture and the part they play in this.

ASPECT FOR IMPROVEMENT

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.

Overall satisfaction of witnesses

- 5.69 The Witness And Victim Experience Survey (WAVES) undertaken by OCJR was still under development prior to the implementation of NWNJ and the Victims' Code. However three quarters (75%) of the nearly 23,000 victims and witnesses interviewed as part of WAVES in 2005-06 stated that they were "completely", "very" or "fairly" satisfied with the contact they had had with the CJS.
- 5.70 The most recent WAVES data, based on 9,012 interviews with victims and witnesses whose cases closed in the first quarter of 2008-09, showed that 81% were "completely", "very" or "fairly" satisfied with the contact they had had with the CJS. Whilst for a number of technical reasons data from the early WAVES is not directly comparable with the more recent figures and WAVES excludes victims and witnesses of the most serious crimes or children, survey results indicate a steady improvement in overall levels of victim and witness satisfaction. Although it is not possible to evaluate the degree of improvement that is directly attributable to NWNJ and the Victims' Code, it is considered that these have played a major part.
- 5.71 Of the witnesses interviewed as part of this review 72 (85.7%) said that they would be prepared to give evidence in the future should they be a witness of crime in the future and 14.3% that they would not (it should be noted that our sample was drawn from witnesses who had decided to attend court in the first place).
- 5.72 This is a good result but still leaves a significant minority who would not be prepared to give evidence again. It is clear from the evidence collected during this review that the level of service provided to victims and witnesses varies. Inspectors believe that the unwillingness of some witnesses to give evidence again is indicative of their differing experiences and levels of service received. Despite the focus given to victims and witnesses in recent years this underlines the scope for further improvement.

6 MANAGING THE SERVICE TO VICTIMS AND WITNESSES LOCALLY

Responsibilities at a local level

- 6.1 Local Criminal Justice Boards (LCJBs) were established in April 2003 and are responsible for the local delivery of national initiatives. Their remit is to lead and embed joint working, ensuring that organisational boundaries are not barriers to improving service. All Boards are required to deliver such actions that are necessary to achieve the national Public Service Agreement (PSA) target set by Government for the criminal justice system.
- 6.2 The role of the LCJB is viewed as central to the development, implementation and delivery of the strategy to improve services to victims and witnesses. The need to work across the boundaries of individual criminal justice agencies is core to delivering a joined up service for victims and witnesses. The tensions that exist between single agency priorities and the cross-cutting nature of CJS business should be managed within the auspices of the LCJB. The bringing together of key players from each of the agencies at a senior level should enable the CJS to deliver joint core initiatives in a way which can smooth the natural barriers that exist between the discrete single agencies. However the evidence of this review indicates that this tends not to have happened in the case of the service to victims and witnesses.
- 6.3 The No Witness No Justice initiative established a number of minimum requirements for the support of witnesses through the criminal justice process and led to the introduction of the witness care units responsible for providing information and support to victims and witnesses from the point of charge to the completion of the case. Implementation of NWNJ and the establishment of WCUs was most often the subject of bi-lateral agreements between the police and CPS, reflecting the funding arrangements that accompanied the project. Responsibility for delivery of the NWNJ initiative and the operation of WCUs was passed to LCJBs in 2006. However we found that in practice the bi-lateral approach has continued. This has resulted in LCJBs being less than fully engaged with victim and witness issues. In particular there has been little engagement at the strategic area level with HMCS, a key player in ensuring a good quality of service is provided to victims and witnesses. In a number of criminal justice areas not all LCJB members were aware of relevant victim and witness funding and service issues and the impact of these for their own businesses and the overall quality of service provided.

Local governance arrangements

- 6.4 WCUs were intended to be jointly staffed and managed by the police and CPS. In practice this is far from the case and WCU staff are predominantly from the police with varying and often minimal CPS presence. As at April 2008 WCUs employed a total of 1,474 managers and officers of which 80.9% were police staff and 19.0% CPS. In some areas visited the units are referred to as police WCUs. While some units house both a CPS and police staff manager, performance and any issues that needed addressing were dealt with by reference to the individual agency's management structures rather than jointly.

- 6.5 Whilst all victims and witnesses are entitled to the same level of service irrespective of where they happen to live, we found the level of service provided to victims and witnesses to vary significantly both between areas and between WCUs within the same area. A major contributory factor was differing caseloads. Caseloads were found to vary considerably between areas and this impacted on the actual level of service WCU officers in practice are able to provide. Whilst the accuracy of national data is questionable, it shows significant variations in recorded WCU caseloads across areas. For instance national data for June 2008 showed that while the average number of allocated trials per officer was 35, this figure ranged from nine cases per officer in one area to 71 in another. In the same month the numbers of witnesses supported ranged from 204 per officer to 862 (average 358). In only one area visited had there been a realistic attempt to assess the level of staff it needed to meet NWNJ requirements.
- 6.6 We also found differences in work processes and systems across and within areas which also contributed to the varying levels of service provided. The number and sizes of WCUs also varies. For instance in one large urban area visited there was a single unit while in another similarly sized urban area there were 11. Managers told us that some national guidance in respect of the above issues would be helpful. A recommendation that the Victim and Witness Care Delivery Unit undertake process mapping of WCU functions and provide guidance on resourcing levels and delivery models is made in paragraph 7.22 where budgetary issues are considered.
- 6.7 Various, and generally weak, governance arrangements are in place for dealing with delivery and improvement of the service to victims and witnesses. Project groups which originally oversaw the implementation of NWNJ tended to be disbanded when responsibility passed to LCJBs and responsibilities for victims and witnesses allocated to other groups. Some areas have since established witness and victim sub-groups reporting to the LCJB. Whilst these provide some focus for activity they were found to lack clarity of direction and tended to be more operational than strategic in nature. Where these operated alongside a separate LCJB performance sub-group responsibilities for driving service improvement could be confused. WCU managers were generally unclear as to the role of the LCJB. In one area a group was established with responsibility for the oversight and performance of WCUs that had no reporting links to the Board.
- 6.8 Some LCJB performance sub-groups mirrored local police structures and were based on a basic command unit structure. Although this structure should allow issues to be addressed locally, in practice victim and witnesses issues were not prioritised or considered sufficiently at a level to bring about improvement. In some cases where the WCU was seen solely as a police and CPS matter its operation was not considered at all. At least two LCJBs which operated this structure and had disbanded their victim and witness sub-groups were considering re-establishing them to enable greater focus on victim and witness issues.
- 6.9 It is recognised that there will frequently be tensions and rubbing points between the various initiatives criminal justice agencies are required to implement. Inspectors found that in many areas visited these tensions, impacting on the service to victims and witnesses and identified by front line staff, were not being managed as well as they might be at the area strategic level. The LCJB would seem the appropriate forum in which to consider the overall impact of change and ensure that, if there appears to be contradictory outcomes from the projects that are being implemented, there is a feedback to the centre as well as action to be taken to consider how these tensions can be managed locally.

- 6.10 It was also evident that the number of initiatives being introduced at the local level by each of the areas meant that, once the initiative was seen to be delivered, the support project controls (implementation team, senior responsible officers etc) were usually removed and the work seen as 'business as usual'. This approach resulted in the focus of attention moving to the next project and a 'tick box' mentality to delivering the large and complex change agenda. In the case of the victim and witness experience interviews confirmed that this had in many cases led to the view that once the WCUs had been introduced the LCJB and any supporting sub-group structure was no longer needed, which had a detrimental impact on the attention given to improving witness care.
- 6.11 Each of the LCJB Business Plans examined for 2008-09 (one Board did not have a plan in place) highlights victims and witnesses as a priority in terms of it being a key aim to "put victims and witnesses at the heart of the system". Whilst all plans reflected the strategic intent there was a lack of detailed joint planning to turn this into practice. Criminal justice areas were tending to rely on individual agency plans to facilitate developments but these did not necessarily add up to the LCJB's commitments to victims and witnesses. This also contributes to the perception that victim and witness initiatives are not jointly owned and encourages a 'silo' approach.
- 6.12 LCJBs had been requested by the OCJR to submit their three year Strategic Plans for 2008-11, including plans for victims and witnesses, and their Business Plan for 2008-09 by October 2008. Guidance in this respect was supplied in mid August, which was rather late to be of assistance to areas. At the time of our visits areas were not well placed to comply with the required timescale. Only one was found to have a joint strategy and action plan in place for improving service to victims and witnesses which, coming at nearly half way through the year, was less than satisfactory.

Performance management

- 6.13 The lack of joint strategic focus on victim and witness issues at LCJB level was very much replicated in the approach to joint performance management. Whilst there was some evidence that performance information relating to victim and witness obligations (set out in the Victims' Code and NWNJ requirements) was being collected and considered as part of a suite of performance information in some CJS agencies, we found evidence in only two areas of a good level of joint consideration of performance and in only one was this driving improvement actions. In many areas there was a complete absence or limited reporting of victim and witness performance data at LCJB level, for instance data on witness attendance rates and cracked and ineffective trials due to witness issues.
- 6.14 Starting in 2007 LCJBs have been required to undertake six monthly self assessments of their performance in meeting their obligations under the Victims' Code and NWNJ requirements. These are returned to OCJR and the national VWCDU respectively.
- 6.15 This thematic review has found that the self assessments are insufficiently robust. In many areas they were undertaken without consultation with WCU managers - some were not even aware of the process - and in a number the assessment did not accord with our findings. Indeed, in many areas it was difficult to understand how conclusions had been reached as the data required to complete the self assessments was not being captured. Police case management systems are currently unable to generate the full range of Victims' Code compliance data, nor is the Witness Management System (WMS) able to generate full NWNJ compliance data. In some areas dip sampling is being used as a method of assessing and monitoring compliance.

- 6.16 Despite monthly performance reports being provided to each area by the VWCDU which cover both primary and secondary performance data³⁴ within WCUs, there was a general lack of performance data available to managers and staff. For example managers did not all see NWNJ primary performance data, i.e. the level of cracked and ineffective trials due to witness issues and witness attendance levels. Performance arrangements at an operational level were generally lacking. Most operational staff we spoke to were not aware of victim and witness performance in their area of responsibility or across the criminal justice area generally.
- 6.17 There was little evidence of any victim and witness improvement plans in place at operational level. When the NWNJ was signed over to LCJBs in late 2006 all areas agreed a follow up action plan. However as areas have worked through the actions that existed then they have not revised the plan or identified further improvements. At the time of our review only one area had an improvement plan in place for its WCUs.
- 6.18 We found some sharing of good practices within teams, for instance within WCUs, but systems for sharing good practice across areas as a whole were underdeveloped.
- 6.19 In general we have identified limited local strategic focus on victim and witness issues, coupled with underdeveloped performance management. This is contributing to variable and inconsistent levels of service being provided to victims and witnesses across the country and sometimes within areas.

Use of the Witness Management System

- 6.20 Much national data is collated from WMS. This is a system which was specifically designed to support the implementation of NWNJ and the daily role of witness care officers. It is used by the majority of WCUs to manage their work. However a minority of areas (currently five out of 42 nationally) use other IT systems as adoption of WMS was not compulsory. We visited one of these and found this impacted adversely on both the area's ability to manage its work electronically and the production of reliable performance information. There is an arrangement in place whereby four of the five areas enter relevant data manually onto a tracker system and send this to the VWCDU, which is responsible for performance reporting. However this complicates the collection of national data and means that it is not always possible to show the full extent of national performance, which is unsatisfactory.
- 6.21 When used fully WMS has the capacity to provide all necessary information on witnesses including consolidated lists of witness availability; contact logs of all interaction with witnesses; records of needs assessments; and witness attendance details. Inspectors found the extent of information recorded on WMS, whilst improving overall, varied significantly between the review sites. For example our file sample revealed that all communication with witnesses was logged on the system in 53 of the 62 cases examined (85.5%), but this excluded files from one area that did not use WMS. Comprehensive recording of contact with a witness is beneficial in several respects, but in particular assists in identification and support of individual and developing witness needs and permits shared responsibility of files when necessary. It also helps generate fuller and more comprehensive performance data.

34 Primary data includes cracked and ineffective trials due to witness issues. Secondary data includes attendance rates, VPS take up, special measures applications, referrals to support organisations and other support provided.

RECOMMENDATION 14

The joint Victim and Witness Care Delivery Unit should ensure that witness care units 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.

Taking issues forward

- 6.22 Overall we found a general lack of joint ownership for victim and witness issues at LCJB level. In most areas visited structures to provide a joint and robust overview of victim and witness issues at local level were found to be lacking. This was compounded by a lack of area strategies and improvement plans for victims and witnesses and the availability of performance data by which to measure performance. As a result areas are not being as proactive as they might in relation to victims and witnesses and important operational issues at the front line are not always being flagged up and responded to jointly.
- 6.23 Despite this we found that those at the front line responsible for delivering the service to victims and witnesses were keen to offer a good service and took pride in what they did. Whilst the lack of a fully joined up approach frequently made their tasks more difficult, we found that staff were often working hard to manage despite this.
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RECOMMENDATION 15

Local Criminal Justice Boards 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.

7 NATIONAL STRATEGY, GOVERNANCE AND PERFORMANCE MANAGEMENT

National expectations and aspirations for victims and witnesses

- 7.1 The commitment to improving the experience of victims and witnesses within the CJS can be seen as a developing one. The Strategic Plan for Criminal Justice 2004-08³⁵ outlined in clear terms what victims and witnesses should expect to be different in 2008. The commitment was built upon the premise that “criminal justice will be organised to support the victim and thwart the offender”. To ensure that this commitment was delivered the plan outlined a number of expectations that those involved in the CJS would be responsible for delivering. In the foreword to the plan the then Prime Minister Tony Blair summarised the Government’s commitments namely that “victims and witnesses are at the forefront of the Criminal Justice System”.
- 7.2 Delivery of the 2004-08 commitments rested primarily on the implementation of the No Witness No Justice initiative. As described earlier this involved the creation of a nationwide network of witness care units to be run jointly by the police and CPS to provide information and support to victims and witnesses from the point of charge to the completion of their case. These were to be in place by the end of 2005 with delivery backed up by funding of £36 million over a three year period. The other main development was the introduction of the Victims’ Code in 2006 setting out minimum standards for the service to victims from the initial investigation stage through to case completion, together with a commitment to appoint a Victims’ Commissioner.

What has been achieved in practice?

- 7.3 As part of this thematic review the service provided by WCUs was assessed as well as compliance with commitments set out in the Victims’ Code. Findings are set out in previous chapters.

Impact of No Witness No Justice on victim and witness experiences

- 7.4 Following early pilots a national network of WCUs was established by December 2005. There are now 157 in operation including one covering the City of London and the British Transport Police unit. Criminal justice areas are each expected to meet 16 minimum requirements which together set out a framework for the information and support to be provided to victims and witnesses. Requirements are not exclusive to WCUs and include one for police officers to undertake an initial assessment of victim and witness needs when a statement is being taken and a requirement for prosecutors to ensure that victim and witness needs are considered when the charge is being decided upon. The other requirements that fall to WCUs range from one for each area to structure its unit to provide victims and witnesses with a single point of contact to detailed timescales for the provision of hearing outcomes and sentencing information. A summary of the minimum requirements is set out in annex G.
- 7.5 Following the establishment of WCUs in all areas and final reviews undertaken by the central project team, responsibility for the NWNJ initiative was handed over to LCJBs in the latter half of 2006. Since that time the national Victim and Witness Care Delivery Unit (previously the NWNJ implementation project team) has requested that areas undertake two self assessments against the 16 minimum requirements. The first of these was in October 2007 covering the period April-September 07 and the second in April 2008, covering October 07-March 08.

35 A Strategic Plan for Criminal Justice 2004-2008 – presented to Parliament by the Secretary of State for the Home Department, the Secretary State for Constitutional Affairs, the Attorney General, July 2004.

Table 7: Level of area compliance with NWNJ minimum requirements

Minimum requirement	Areas assessed as fully compliant at sign over (mid to late 06)	Area self assessed as fully compliant in Sept 07	Areas self assessed as fully compliant in Apr 08
1 Initial needs assessment undertaken at point of statement	1	14	20
2 Detailed needs assessment conducted by WCU	12	23	23
3 Witness needs considered at the charging stage	14	22	22
4 Multi agency WCU(s) in place	25	31	31
5 Multi agency protocols in place outlining the role of each agency	6	27	32
6 Single point of contact for witnesses	20	34	37
7 Arrangements in place to consult with victims, witnesses and community groups	12	23	23
8 Support/contact directory in place for witness care officers	24	32	34
9 Front line staff receive appropriate training	8	31	35
10 Electronic monitoring system used to monitor performance	19	24	28
11 Locally produced materials are regularly reviewed and improved	33	32	33
12 Update information, as specified, is provided to witnesses in not guilty plea cases	9	19	22
13 Update information, as specified, is provided to witnesses in guilty plea cases.	25	23	24
14 Update information provided is timely	5	15	10
15 Communication with witnesses is via their preferred means of contact	15	29	34
16 Sentencing information provided is timely	12	20	26

Source: Self assessments of compliance with NWNJ required to be undertaken by all areas by the Victim and Witness Care Delivery Unit in April 2008.

7.6 Whilst the self assessments do not provide a fully accurate picture of compliance (we set out our reservations about the robustness of the self assessment process in paragraphs 6.15 and 7.62) they do at the least provide a general indication of progress being made at area level.

- 7.7 In April 2008, 21 of the 42 areas reported an improved position overall compared with the earlier assessment in 2007, six reported no change and 15 areas a decline in performance. (These figures also take into account partial and zero as well as full compliance as reported above.) Although it is positive that half of the areas consider their performance to have improved, it is worrying that a significant proportion reported a decline. Whilst this may be due to some areas taking a more realistic approach to their self assessment judgements as they become more familiar with the process, it may also be that performance is falling off as the NWNJ initiative becomes business as usual. This was certainly the case in several areas visited where resources were being reduced, in one area significantly.
- 7.8 In October 2007, 75% or more of areas assessed themselves as fully compliant with at least four of the minimum requirements and by April 2008 this had risen to seven of the 16 requirements. However these are perhaps not surprisingly the more straight forward standards and responses indicate that areas are still having difficulties in complying with the more challenging ones. This was borne out in our fieldwork.
- 7.9 Central to the NWNJ approach is that a needs assessment is undertaken for all witnesses and this provides the basis for providing relevant practical and emotional support and timely information to those witnesses who are required to attend court. The self assessments indicate that the majority of areas are still having difficulties in compliance with the requirement that police officers conduct an initial needs assessment, although there are signs of improvement. In the first self assessment just 15 areas rated themselves as fully compliant with this requirement and this had risen to 20 areas in April 2008. Self assessment responses would also indicate difficulties in complying with the requirement for detailed needs assessment to be conducted by WCUs. In the first self assessment 23 areas rated themselves as fully compliant with this requirement and, although in April 2008 this had improved slightly to 25, more needs to be done to improve compliance with this key requirement.
- 7.10 The requirement providing the greatest challenge is the provision of outcomes and sentencing updates to vulnerable and intimidated witnesses within one working day. This has consistently presented the greatest challenge though the life of the NWNJ project, but was put in place to ensure victims and witnesses receive updates direct from the CJS and not from the media or through contact with the defendant themselves. The timely provision of update information to vulnerable and intimidated witnesses is also an essential component in the management of risk. In the first self assessment 15 areas said they were fully compliant with this requirement, but by April 2008 this had fallen to ten. Twenty seven areas assessed themselves as partially compliant and five as non-compliant, the highest rate of non-compliance across all 16 requirements.
- 7.11 There is no doubt that the implementation of WCUs has improved the overall experience of victims and witnesses when compared with the level of pre-unit service. The focus on support, keeping those involved in cases informed of progress and the assessment of needs leading to a better overall experience, is a great improvement on what had been in place before 2004. However the change in the funding arrangements and the move of the initiative to business as usual has had a major impact in a number of areas which puts some of the improvements and achievements at risk.

Review of No Witness No Justice benefits realisation

7.12 Three key aspects of performance have been used to assess the impact of the NWNJ project locally and nationally. These are the levels of cracked and ineffective trials due to witness issues and attendance. In the original Invest to Save Budget³⁶ bid that provided the basis for the NWNJ project funding it was forecast that a 60% reduction could be achieved in the number of cases recorded as cracked or ineffective due to witness issues by the end of December 2007. No target was set for witness attendance as attendance data had not been previously captured and hence there was insufficient information on which to base a target.

7.13 At the end of December 2007 the position was as follows:

- A 59.2% reduction (43.9%*) in the number of ineffective trials due to witness issues in the Crown Court and a 36.8% reduction (33.3%*) in the magistrates' courts.
- A 60.5% reduction (48.8%*) in the number of cracked trials due to witness issues in the Crown Court and a 10.9% increase (15.2%*) in the magistrates' courts.
- A combined cracked and ineffective trial improvement of 21.0%.
- A 10.3% improvement in witness attendance to 85.3%.

* We would argue that measuring progress in terms of the reduction in actual numbers of cracked and ineffective trials is not the most appropriate measure as changing workloads have an impact. A truer picture of progress is obtained by calculating the improvement in the percentages of cracked and ineffective trials. These figures are included above in brackets. As may be seen outcomes calculated on this basis are less positive.

7.14 Since December 2007 year on year performance has shown a slight improving trend across all measures, as illustrated in the table below. However the level of ineffective and cracked trials due to witness issues continues to vary significantly across areas. In 2007-08 the level of ineffective trials in the magistrates' courts due to the absence of a defence or prosecution witness ranged from 1.3% in Suffolk to 6.5% in Nottinghamshire and in the Crown Court from 0.4% in Northamptonshire to 4.2% in Leicestershire. Over the same period cracked trials due to witness issues in the magistrates' courts ranged from 1.0% in Dyfed Powys to 10.9% in Cleveland and in the Crown Court from zero in Warwickshire to 3.7% in Northamptonshire. Whilst there is a view that the original 60% improvement target was overly ambitious there remains scope for improvement overall, particularly in the magistrates' courts.

36 A government funding stream administered by HM Treasury.

Table 8: No Witness No Justice benefits realisation

	Baseline	2006-07	Dec 07	Improvement on baseline	2007-08	2008-09 to date (July 08)	Improvement on baseline
Ineffective trials due to witness issues							
Magistrates' courts	4.8%	3.2%	3.0%	33.33%	2.9%	2.8%	41.67%
	751		474.6	36.80%	466.3	430.3	42.70%
Crown Court	4.1%	2.3%	2.1%	43.90%	2.0%	1.9%	53.67%
	157		64	59.24%	60.7	57	63.70%
Cracked trials due to witness issues							
Magistrates' courts	4.6%	5.3%	5.3%	(15.22%)*	5.1%	4.6%	0.00%
	765		848.5	(10.90%)*	833.8	722.5	5.56%
Crown Court	4.1%	2.2%	2.1%	48.78%	1.9%	1.7%	58.54%
	163		64.4	60.49%	57.2	51.8	68.22%

* Rather than reducing, the number of cracked trials in the magistrates' courts increased.

Source: Victim and Witness Care Delivery Unit performance data

7.15 Witness attendance has shown a gradual and steadily improving trend since the implementation of NWNJ when the baseline was established at 77.3%. By December 2007 performance had increased to 85.3%, representing a 10.3% improvement on baseline. In July 2008 attendance stood at 87.2%, which represents a further improvement to 12.8% above baseline. As for cracked and ineffective trials, performance varies across areas with two having an attendance rate of less than 80% and nine with an attendance rate above 90%.

No Witness No Justice funding and cost benefit analysis

7.16 Approximately 75% of the £36 million funding to implement NWNJ was secured from the Invest to Save Budget, with the remainder provided by the CPS, ACPO and Home Office. The funding bid was based upon NWNJ delivering financial savings in excess of its costs. Savings were expected in police officer time due to most of their victim and witness care duties being transferred to WCUs. Savings were also expected in the CJS as a whole by reducing the number of cracked and ineffective trials. The start up funding was spread over a three year period ending in March 2007. This was also a potential positive indicator set out for the statutory charging scheme. As we pointed out in the recent joint review of charging,³⁷ it is unclear as to how much of the improvement is attributable to individual projects.

7.17 In 2006 an independent consultancy firm was commissioned to establish whether the project was on track to deliver the savings anticipated. Whilst pointing out that the financial estimates made were indicative and not precise measures of cost and benefit the report concluded that NWNJ, at that early stage, appeared to be delivering financial benefits in excess of its costs and at or above the level of benefit claimed in the original business case.

37 The joint thematic review of the new charging arrangements, CJ Joint Inspection, November 2008.

7.18 The total level of benefits was estimated at £32 million a year broken down as follows:

Table 9: NWNJ: Estimated annual costs and benefits for 2007-08 onwards

Agency	Annual cost	Annual benefits	Surplus/ (deficit)
Police	£5.6m	£26.9m	£21.3m
CPS	£6.6m	£1.5m	(£5.1m)
Department for Constitutional Affairs (now the Ministry of Justice)	Nil	£3.6m	£3.6m
Total	£12.2m	£32.0m	£19.8m

7.19 These figures show that the estimated benefits of NWNJ significantly exceed its costs. Benefits to the police were estimated to outweigh their costs by a factor of almost 4:1 and the Department for Constitutional Affairs is seen to gain around £3.6 million of benefits annually with no direct costs. However HMCS has never accepted the cited NWNJ benefits for the Department of Constitutional Affairs (now the Ministry of Justice) seeing these as theoretical non-cashable benefits with no proven links established between delivery of the project and the indicators. At the same time the CPS is seen to incur annual costs of around £5.1 million in excess of the benefits it gains. Whilst the overall cost and benefits position indicated that the project should be sustainable, most benefits identified are capacity releasing (e.g. time released to undertake other tasks) and not cash releasing. The capacity releasing benefits do not accrue to WCUs themselves so NWNJ is not self financing in that sense.

7.20 Prior to the ending of the central NWNJ funding ACPO wrote out to Chief Constables setting out the benefits of NWNJ and seeking their support in retaining resourcing levels given the overall benefits they are seen to be realising. The CPS has committed to retain the level of resourcing for WCUs in area budgets although this is no longer ring fenced. To help fund the estimated £5.1 million shortfall in costs to the CPS as a whole £3 million was provided to the CPS from the proceeds of the victims' surcharge³⁸ in 2007-08. This was reduced to £2.4 million in 2008-09 and future funding from this source after 2009-10 is uncertain. Between September 2007-April 2008 self assessments completed by areas indicated that the number of WCU posts increased slightly by 1.2%. This was made up of a 2.5% increase in police posts and a 4.3% reduction in CPS ones.

7.21 As budgets tighten funding continues to be a significant issue. Staffing levels were highlighted as a difficulty impacting on service delivery in three of the seven areas visited. The ending of NWNJ central funding has inevitably led to some tensions as resources to cover the costs of previously funded posts need to be found from other budgets. In two areas this had led to a rationalisation of WCU staffing levels, underway at the time of our visits, in one area resulting in a significant reduction in WCU staff overall. At the same time in two other areas resources were being strengthened, particularly in relation to management levels.

38 As from 1 April 2007 a victims' surcharge of £15 has been added to all fines for criminal offences. This is paid into a fund aimed at helping improve services to victims.

- 7.22 There were no up to date national WCU staffing figures available at the time of the review, so it was difficult to assess the overall picture.³⁹ It was not the intention of this inspection to assess the resourcing levels or cost effectiveness of the service provided to victims and witness as part of NWNJ or other relevant developments and initiatives. However given the central role that WCUs play and the prospect of further tightening of budgets ahead, work to assess resourcing levels to ensure that witness care is adequately resourced would be appropriate and timely. Ideally this should be undertaken in conjunction with the recommended process mapping and guidance on resourcing levels and delivery models referred to in paragraph 6.6.

RECOMMENDATION 16

The joint Victim and Witness Care Delivery Unit should assure itself that No Witness No Justice resourcing levels are such that they enable areas to meet the requirements of them. As part of this it should undertake process mapping of witness care unit functions and provide guidance on resourcing levels and delivery models.

- 7.23 As to what has been achieved overall, there is no doubt that the implementation of WCUs has improved the overall experience of victims and witnesses. The focus on support, keeping those involved in cases informed of progress and the assessment of needs leading to a better overall experience is a great improvement on what had been in place before 2004. However, as described above, assessing the precise level of service provided against each of the minimum requirements set out for WCUs proved more difficult. Looking to the future, maintaining adequate resourcing levels will be a key challenge.

Impact of the Victims' Code

- 7.24 Turning to the Victims' Code, whilst there can be little doubt that this for the first time outlined a clear set of expectations for victims of crime and has certainly raised the profile of the service provided to victims, it is more difficult to assess what the Code has produced in terms of measured improvement. We found a lack of clear understanding of the Code requirements at the front line within the criminal justice agencies assessed. Performance management systems were generally lacking in this respect or unable to produce reliable data to show the extent of compliance with the Code. Given the statutory nature of the Code this is a matter of concern which is reported on at paragraph 7.62.
- 7.25 No statutory code has been introduced for witnesses who are not victims. Instead a Witness Charter has been introduced. Although this was initially consulted on in November 2005 it was not until 2007-08 that it was piloted in the ten Beacon areas. At the time of our inspection the Witness Charter was in the process of being implemented by the agencies in other areas except by the police, who were expected to implement the Charter in 2009-10.

³⁹ As part of the self assessments areas were required to undertake in October 2007 and April 2008 they set out their staffing levels. However the self assessment expected to be completed in October 2008 was cancelled.

7.26 Underpinning the Victims' Code the CJS Strategic Plan for 2004-08 also committed to put the Victims' Advisory Panel⁴⁰ on a statutory basis, which it has done, and establish an independent post of Victims' Commissioner to provide a voice for victims at the heart of Government. At the time of writing this appointment had yet to be made although a recent announcement by the Home Secretary (2 November 2008) indicated that this post should be filled by early 2009.

Where improvements are needed

- 7.27 The implementation of WCUs, together with the introduction of the Victims' Code, have resulted in a significant change for the better in the overall service offered to victims and witnesses. However equally some improvements are needed. In addition to the matters in relation to the two key initiatives dealt with above further work is needed on other aspects.
- 7.28 As well as NWNJ and the Victims' Code, an array of other initiatives have also been introduced to improve the service to victims and witnesses in the various criminal justice agencies in recent years. These include some that have been implemented jointly such as the roll out of the various special measures set out in the Youth Justice and Criminal Justice Act 1999, Victims' Personal Statement Scheme, piloting of the Witness Charter, introduction of Independent Domestic Violence Advocates and, more recently, Independent Sexual Offences Advisers. Others have been more specific to a single agency. In the police this has included the development of more specialist roles and facilities to support victims of more serious crimes and the introduction of new service standards in the Quality of Service Commitment. In the CPS this has included initiatives such as the Prosecutors' Pledge, Direct Communication with Victims, Victim Focus Scheme, Pre Trial Interviews with Witnesses and most recently Post Acquittal Meetings. At the same time HMCS has introduced area witness champion and court level witness liaison officer roles as part of their Every Witness Matters strategy. Whilst all of these developments are valuable in their own right and contribute to improvements, we found that staff involved with victims and witnesses are struggling to keep up to date with all these new initiatives and the implications of them for their roles.
- 7.29 There is a tendency to layer new commitments and initiatives on top of existing ones, without any review and rationalisation of existing documentation. For instance the Witness Charter repeats certain commitments in the Victims' Code as well as adding new ones and in the case of waiting times the new commitment conflicts. The Victims' Code says that court staff will ensure as far as possible that victims who are witnesses will not wait longer than two hours before giving evidence, whereas the aim set out in the Witness Charter is that witnesses should wait no longer than one hour in the magistrates' courts and two hours in the Crown Court. Adding to the difficulty is that commitments are spread across an array of documents which are available from different sources. The Victims' Code, minimum requirements for WCUs and the Witness Charter are by their nature detailed documents and it can be difficult for staff responsible for delivering these to recall all the various commitments, let alone for victims and witnesses who are not familiar with the CJS to easily find out about the service they can expect. If a witness wanted to establish the standard of service he or she was entitled to under the Victims' Code, the Prosecutors' Pledge and Witness Charter they would need to read through 36 detailed A4 size pages.

40 This is statutory body established in March 2003 to advise the Home Secretary, Lord Chancellor and Attorney General in relation to victim matters. See annex A for further detail.

RECOMMENDATION 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:

- 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.
-

7.30 As a consequence of the wide range of initiatives introduced in recent years we found the victim and witness field to be a crowded one. This has led to a good deal of confusion on the part of staff responsible for delivery of service to victims and witnesses about the roles of the various players. It was evident that police personnel have a lack of knowledge about the different functions carried out by Victim Support, WCUs and the Witness Service. We also spoke to CPS and HMCS staff who were unable to distinguish between the role of the WCUs and that of Witness Service and others who thought that WCUs were part of the police and that the Witness Service was part of HMCS. Confusion was particularly apparent in relation to Victim Support and new initiatives such as Victim Support Plus⁴¹ and Enhanced Witness Service⁴². Overall it was very apparent that those at the working level were often unaware of the support mechanisms available, who was doing what and how it fitted together as a strategy to deliver improvements for the victims and witnesses.

7.31 The plethora of players can also cause confusion for individual victims and witnesses who can be contacted by many different people. For instance a victim of domestic violence who goes on to give evidence at a trial could be contacted by most of the following:

- the officer investigating the case;
- Victim Support representative;
- a domestic violence liaison officer;
- a witness care officer;
- an independent domestic violence advocate;
- the prosecutor in the case;
- Witness Service representative;
- representatives of relevant charities e.g. Women's Refuge; and
- probation service liaison officer.

7.32 Whilst each of the above has a specific role and a potentially valuable service to provide, multiple contacts can cause confusion on the part of victims and, unless handled well, information and support overload. Indeed we spoke to many witness care officers who told us that victims can on occasions feel overwhelmed by contact and ask for no further contact to be made.

7.33 Ideally contact with a victim prior to and after charge should be co-ordinated and managed by a single point of contact, ideally the officer in charge of the case or specialist liaison officer prior to charge and a witness care officer post charge, but this is not always the case.

41 Victim Support Plus provides a quicker response time and a wide range of services in addition to emotional and practical support. See annex B for fuller details.

42 Enhanced Witness Service provides an enhanced service for vulnerable and intimidated witnesses comprising earlier contact and greater levels of pre-trial preparation. See annex B for fuller details.

ASPECT FOR IMPROVEMENT

Local Criminal Justice Boards 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.

National strategy and responsibilities for victims and witnesses

- 7.34 OCJR is responsible for developing and leading the delivery of national victim and witness strategy on behalf of the Home Office, Ministry of Justice and Attorney General's Office. In order to facilitate this a Victim and Witness Delivery Board was established in June 2008 reporting to an Operational Board which then reports into the National Criminal Justice Board. The main remit of the Victim and Witness Delivery Board is to develop and manage a trilateral strategy and plan to deliver the victim and witness satisfaction component of the justice PSA target.
- 7.35 The victim and witness strategy for 2008-11⁴³ builds on the actions and commitments of the 2004-08 Strategic Plan for criminal justice. The vision set out is "to deliver high standards of service to victims and witnesses with the needs of victims at the heart of the system". The need to embed service standards in all parts of the system and to consider the experience of victims and witnesses as a whole, rather than just their interactions with individual agencies, is recognised. The plan refers to the need to streamline the whole victim and witness experience.
- 7.36 It became apparent during the review that the national strategy for victims and witnesses and the strategy of the individual criminal justice agencies are not as linked and co-ordinated as they might be. The individual agency strategic plans appear as separate stand alone plans as opposed to forming an integral part of the trilateral national strategy. Both the CPS and HMCS have launched separate strategies to support victims and witnesses. In both cases these set out broad expectations and commitments some of which can, by their nature, be difficult to measure progress against. While there is an ACPO lead for victim and witness issues, the autonomous nature of the 43 police forces in England and Wales is also an issue in terms of delivering a consistent service in line with national priorities.
- 7.37 As part of its responsibilities for the setting and delivery of the national strategy for victims and witnesses OCJR needs to ensure there is a clear understanding and commitment to how the overall commitment to victims and witnesses can be delivered through single agency strategies and plans and how these dovetail and complement LCJB strategies and plans. There needs to be a greater emphasis placed on managing this aspect if improvements in the experiences of victims and witnesses are to be delivered in a co-ordinated and effective manner. For example, at the time of our review organisations were at different stages of acceptance and implementation of the Witness Charter and the implications in terms of delivery did not appear to be clearly understood. A clear joint focus is required if the goal and commitment of the 2008-11 Strategic Plan of working together to "look at the experience of victims and witnesses as a whole rather than just considering their interactions with individual agencies" is to be realised.

43 Working Together to Cut Crime and Deliver Justice – A Strategic Plan for 2008-2011 Presented to Parliament by The Secretary of State for the Home Department, The Lord Chancellor and Secretary of State for Justice, The Attorney General, November 2007.

- 7.38 The recent governance structures that have been put in place by OCJR to manage the delivery of the national strategy should now mean that all stakeholders are clear as to where all relevant organisations fit in.

Cascading national strategy into local delivery

- 7.39 As outlined above the strategy for improving services to victims and witnesses is clearly outlined within the 2004-08 and 2008-11 Strategic Plans. In the case of the 2004-08 plan a commitment of £36 million to implement and fund the running costs of witness care units for three years was also made. The apparent mismatch in planning and delivery owes much to the lack of cohesion and sometimes fragmentation of strategy and plans on the part of agencies at national level which must be put into practice at local level.
- 7.40 It appeared to inspectors that the national commitments outlined in the strategic plans and the translation of this strategy into a PSA target relating to victim and witness satisfaction does not set clear enough objectives and targets for what should be delivered at a local level. At the LCJB level the linking of victim satisfaction to delivering a series of initiatives including No Witness No Justice, the Victims' Code and more recently the Witness Charter did not set out in clear terms what was being expected of LCJBs. This has contributed in many cases to the absence of a clear sense of Board ownership for the service delivered to victims and witnesses.

How does the victim and witness agenda fit with other changes within the criminal justice system?

- 7.41 The changes that have been implemented to improve the experience of victims and witnesses are one strand among a number of changes that are being introduced to improve and enhance the CJS as a whole. It is therefore difficult to assess their impact in isolation and without considering how some of the wider criminal justice initiatives are impacting on service delivery.
- 7.42 During the review interviewees highlighted tensions that existed between some of the differing initiatives and targets. On the face of it some of these tensions appeared to be driving the business in the same direction, for instance Criminal Justice: Simple, Speedy, Summary aims to improve the speed and efficiency of processing cases through the courts which ensures that victims and witnesses are getting closure in their cases as quickly as possible. Swift processing and speedy justice should also ensure that witness attrition is reduced as cases progress quickly.
- 7.43 However the drive for speed of listing and processing could have detrimental impacts on the service being offered to victims and witnesses. For example in some areas the timescale between the listing of the trial and the first hearing had been reduced to such an extent that it was difficult, if not impossible, for all the necessary support such as pre-trial court familiarisation visits to be arranged in advance of the trial. Other consequences of the drive for speedy processing were the pressure being placed on WCUs to undertake timely needs assessments and the duplication of effort in warning and de-warning witnesses in cases where provisional dates for trial were being set because full information was not available at the date of first hearing. Likewise the drive to make best use of court resources can on occasions take priority over victims and witnesses needs. These issues are covered more fully in chapter 4.
- 7.44 We mention earlier the need for the inherent tensions between the various initiatives and changes being introduced in the criminal justice arena to be managed better at area level including management of initiatives when they become business as usual.

- 7.45 In terms of what this meant for victims and witnesses in the areas we visited, we were too often concerned that there was no real strategic or overall view across all of the agencies about what they were responsible for delivering and how this fitted into the wider agenda of putting victims at the heart of the system.
- 7.46 Part of the issue appears to be the very large number of changes that the CJS is subjected to as processes and priorities are directed from the centre. Overlaid with the local initiatives and drives to improve performance and service, this leads to numerous initiatives and targets which may have differing consequences being driven within the area and the impacts of each other not being effectively managed. Project interdependencies and impacts were not always considered and the impacts of individual organisational changes are rarely considered within the context of cross-cutting projects.

How does this all fit with Victim Support

- 7.47 As outlined previously this review did not assess or inspect Victim Support. However as would be expected from any consideration of the victim and witness experience the role and remit of Victim Support forms a central element.
- 7.48 The expanding role of Victim Support is central to the overall strategy of support to victims and witnesses. In 2007 the grant to Victim Support rose to £30 million and in 2007-08 a further £5.6 million was provided to fund a programme of enhanced services for victims. The 2008-11 Strategic Plan outlines that “we will improve the links between the voluntary sector and the Criminal Justice System. This will include better referral mechanisms from the police to Victim Support; improved arrangements for liaison and representation between Victim Support areas and LCJBs; and improved working between Victim Support, The Witness Service, Witness Care Units and Courts”.⁴⁴
- 7.49 During the course of the inspection inspectors found some very strong relationships developing in areas between parts of the CJS and Victim Support. However in some areas there was less effective interaction between Victim Support and LCJBs at a strategic level. Interestingly the most common issue raised by those interviewed both within Victim Support and the CJS agencies at a local level was a lack of clarity around roles. The proliferation of support mechanisms, different projects and links with other parts of the services being offered to victims and witnesses had in some instances resulted in what appeared to be overlapping roles. Whilst it is recognised that some of the projects being funded by Victim Support were very new, in some instances there had not been effective communication with the CJS to consider how the enhanced services fitted into current arrangements. In those areas where there was little engagement by the LCJB with Victim Support at a strategic level we found that victims (and witnesses) were often confused by who they had been talking to, there was sometimes a reaction of animosity in that they felt that they were being asked about the same issues on a number of occasions and wondered why the system was not joined up.
- 7.50 As outlined previously victims and witnesses praised the services offered by both Victim Support and the Witness Service. The services play a key part in supporting victims and witnesses through the process. The physical support offered in the local context is much more than can be provided in many cases by those involved in the CJS. There is no doubt that there is enough room for all to play a part, but there would be advantage in mapping the landscape

44 Working Together to Cut Crime and Deliver Justice – A Strategic Plan for 2008-2011 pages 39-40.

and considering if there are parts of the process that would benefit from process simplification. The enhanced projects that were implemented by Victim Support during 2008 include contacting most victims of crime to offer support and in most cases undertake a needs assessment. Whilst it is recognised that the remit and extent of this assessment differs from that taken by the witness care units the similar terminology and duplication of contact within the overall process could be simplified to offer an enhanced service but with obvious efficiencies. This is one simple example which was raised by those we interviewed within the services, as well as those who had received the services.

Performance issues

Public Service Agreement performance targets

- 7.51 Revised PSAs set out the measures that will be used to assess performance. In the case of the justice PSA from 2008-09 onwards, at national level, two linked measures will be used to assess victim and witness satisfaction. These are victim satisfaction with the police measured through police force user satisfaction surveys and victim and witness satisfaction with the CJS measured by WAVES,⁴⁵ which covers the experiences of those in cases that proceed to charge or beyond. The national target is to increase performance against both indicators by a statistically significant amount; it is not planned to set a specific target. Within this context areas were awaiting baseline data (due October 2008) from which to set local targets. This delay was found to be contributing to a lack of focus on performance management of victim and witness issues at local level. Inspectors have concerns that the move to local targets will result in a lack of consistency of service nationally.
- 7.52 Areas told inspectors that they find the WAVES data, which they receive quarterly, of limited value primarily because they see the results as out of date by the time they receive them. Whilst the timeliness issue is recognised, more needs to be done to ensure that data is sufficiently current to be of value.
- 7.53 There is also some concern on the part of stakeholders that witnesses and victims included in WAVES are not fully representative of the range people supported. For example youth victims and witnesses are not included in the survey nor are those from the most serious crime. Whilst there are important constraints and considerations to be taken into account in obtaining feedback from such victims, their views would be potentially valuable in helping agencies improve the service they provide to them. Another criticism levelled at WAVES was that the survey does not provide sufficient feedback on the drivers of satisfaction and dissatisfaction and which aspects could be improved.
- 7.54 A number of the areas were therefore in the process of developing their own supplementary victim and witness surveys. In the criminal justice system plan for 2008-11 there is a commitment to explore measures that cover victims and witnesses who are not covered by WAVES. However areas were not aware of any plans in this respect. In the absence of any central direction one area visited had developed and put in place its own survey whilst another was looking to spend in the region of £15,000 on developing its own custom built survey. There is a danger that areas may waste energy and resources reinventing the wheel in the absence of central direction and guidance.

⁴⁵ A national telephone survey of victims and prosecution witnesses in cases that have resulted in a criminal charge. It covers the provision of information and support and the extent to which this meets expected standards.

7.55 WAVES has clearly been designed to provide comprehensive satisfaction data and is the agreed basis for the PSA measure but work is needed if areas are to place their confidence in it.

RECOMMENDATION 18

In order to ensure that the data underpinning a Public Service Agreement 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.

No Witness No Justice performance management

Self assessment processes

7.56 We have already highlighted our reservations about the robustness of the self assessment process by which areas are required to assess performance against the minimum requirements. This is addressed in recommendation 19 set out at paragraph 7.62.

Key performance measures – calculation, targets and aspect for improvement

7.57 As set out earlier, three key aspects of performance have been used to assess the impact of the NWNJ project nationally and locally. These are the levels of cracked and ineffective trials due to witness issues and attendance.

7.58 This year targets and the basis of measurement will change:

- There are to be no national or local targets for the first two of these measures, while there continues to be a target for attendance. There is a danger that in the absence of targets there will be insufficient focus on these measures.
- In future performance in these measures is to be compared with the previous year as opposed to the original benchmark. The rationale for this change is not clear and it will make assessing progress against the benchmark which was set prior to the implementation of NWNJ more difficult.
- The first two measures are calculated on the basis of the numbers of trials as opposed to percentages of trials. Declining caseloads can potentially enhance the figures. Ideally figures should be reworked and percentages used as the basis of measurement in the future which will give a truer picture.

7.59 At the time of this review the Victim and Witness Care Delivery Unit was undertaking a study of cracked trials in the magistrates' courts to help identify the issues that need to be addressed if performance is to be improved (see paragraph 7.13). Early findings had identified a number of issues. For instance in a substantial proportion of the cracked trials (due to witness issues) examined there were concerns about witness attendance before the day of the trial and these cases had not been actively managed. There were also a significant number of cracked trials examined where regular updates had not been provided to witnesses and in some cases there had been no needs assessment or contact since the statement had been taken. There are also emerging issues around the correct use of finalisation and monitoring codes as well as how

the CPS's policy on prosecuting domestic violence cases, a high proportion of which crack, is being applied. It will be important that the results of this review are acted on and further reviews scheduled to ensure that progress is being made.

- 7.60 WMS is now generating more reliable information in respect of what is termed the NWNJ secondary performance data. This includes measures such as the level of referrals to other support agencies, pre-trial court familiarisation visits and Victim Personal Statement take up. At present little use is made of this potentially helpful data, but as its accuracy improves this should change.

Compliance with the Victims' Code

- 7.61 Whilst there can be little doubt that the Victims' Code for the first time outlined a clear set of expectations for victims of crime as set out above, it has proved difficult to assess actual levels of compliance with the Code. Few if any performance management systems were able to produce reliable statistics to show what current performance was. The WMS has the functionality to record Victims' Code compliance data in respect of WCU responsibilities, although we did not see any active use being made of such data. We have also highlighted concerns about the robustness of the self assessment process. Given the Victims' Code is statutory and victims are entitled to receive the level of service set out in it, this is unsatisfactory.
- 7.62 More needs to be done to accurately assess the level of compliance against the Victims' Code and make this publicly available. In relation to the most recent self assessment, OCJR has told criminal justice areas that it will "continue to use the information provided purely to assist in providing support for LCJBs. It will not be used for any performance comparisons or assessments". This does not fit easily with the commitment made in the Strategic Plan for 2004-08 - "Through the Victims' Code, and the management standards that underpin it, we intend to hold criminal justice agencies to account for how they treat victims and witnesses".

RECOMMENDATION 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.

Looking towards the future

- 7.63 The current CJS business plan⁴⁶ sets out the system's targets for LCJBs, describing how the strategic context set out in the CJS strategic plan relates to the new PSA targets and how the delivery framework will operate. In line with the views expressed above the 08-09 Business Plan remains light on detail. LCJBs were expected to have produced an indicative three year local target to increase victim and witness satisfaction with the CJS by October 2008. No formal targets are to be devolved to police forces as the measure for the target will be part of new framework for Assessment of Policing and Community Safety (APACS). The plan states

46 The Criminal Justice System Business Plan 2008-09 Working Together to Cut Crime and Deliver Justice.

“it is vital that LCJBs are able to tailor their activity on this measure to suit the needs of victims and witnesses in their area. As a result, LCJBs will be asked to develop high-level three year strategies setting out the steps they will take to improve services for victims and witnesses. This will be supported by an equivalent national strategy for the CJS”.⁴⁷

- 7.64 During interviews with members who sat on the LCJBs it was very apparent that the lack of early guidance and advice from the centre was making the drafting of any consistent or co-ordinated strategy difficult. We were told by one LCJB business manager that they had received a draft of the likely CJS strategy only a few days before the interview, in the middle of August, and this lack of guidance had made the job of engaging the LCJB very difficult as there was no clear view on what their own three year plan should measure, what the expectations were and how their performance was to be judged.
- 7.65 We are firmly of a view that, whilst it is right that local issues are core to any plans and local strategies for dealing with issues to improve the experience of victims and witnesses, there is an urgent need for clarity of purpose to be shared by the centre. The 2008-11 CJS Strategic Plan and the 2008-09 CJS Business Plan give some indication of projects that will be key to delivering improvement for victims and witnesses, but the lack of detail in what LCJBs are expected to deliver and how they are to be measured was highlighted as a concern by many involved in the Boards.
- 7.66 A good example is in respect of the Witness Charter. The CJS Strategic Plan for 2008-11 and the CJS Business Plan for 2008-09 both refer to standards of service having been set out in the Witness Charter, as if it is already in place. There is no reference in the Business Plan to the need for this to be implemented in the 32 areas which were not part of the pilot. We found a great deal of confusion at the front line in respect of any plans to implement the Charter. Some were not sure what it would entail while others thought it had been implemented (when it had not). As highlighted earlier in this report in many WCUs where resources were stretched service to victims is prioritised because of the Victims’ Code. Little thought appears to have been given to the resourcing implications of implementing the Witness Charter. This is an example where more guidance from the centre would be helpful.
- 7.67 The CJS Strategic Plan for 2004-08 made a commitment that both victims and witnesses would have “a statutory right to high standards of service from criminal justice agencies spelt out in a Code of Practice”. In practice the Victims’ Code is statutory while the Witness Charter is not. This is leading to a two tier system which was not as envisaged in the Strategic Plan and is far from ideal.
- 7.68 As to the future, both the strategic and business plans refer to the need to embed standards. The findings of this review indicate that more emphasis should be put on this aspect. There is a tendency in the strategic documents to list all the new standards and initiatives as achievements and as if they are available and in place consistently for all victims and witnesses. In practice this is far from being the case and a greater emphasis is needed across the board on consolidating and improving compliance with the wide range of commitments set out for victims and witnesses.

47 Ibid page 22.

A 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.

Agent prosecutor

Solicitor or counsel not directly employed but instructed by the CPS to represent the prosecution in the magistrates' courts or Crown Court.

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.

Code for Crown Prosecutors

This sets out the framework for prosecution decision-making. Crown prosecutors have delegated to them the Director of Public Prosecutions' power to review cases, but must exercise the power in accordance with the Code and its two tests – evidential and public interest. 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.

Code of Practice for Victims

Explained in annex B following.

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 Case Management System (CMS)

Computerised system for case tracking and management used by the CPS (also known as Compass).

Cracked trial

On the trial date the defendant offers acceptable pleas or the prosecution offers no evidence before any live evidence is actually heard in court. A cracked trial requires no further trial time. For the purposes of this analysis a Newton Hearing (trial of an issue) is counted as a trial.

Criminal Justice: Simple, Speedy, Summary (CJSSS)

Initiative introducing more efficient ways of working by all parts of the CJS working together with the judiciary, so that cases brought to the magistrates' courts are dealt with more quickly. In particular it aims to reduce the number of hearings in a case and the time from charge to case completion.

Direct Communication with Victims (DCV)

Explained in annex B following.

Discontinued and dropped cases

The dropping of a case by the CPS in the magistrates' courts or the Crown Court without any evidence being called whether by written notice, withdrawal, or offering of no evidence at court.

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.

Ineffective trial

On the trial date expected progress is not made due to action or inaction by one or more of the prosecution, defence or the court and a further listing for trial is required.

Intimidated witnesses

See vulnerable or intimidated witnesses below.

Invest to Save Budget

A joint Treasury/Cabinet Office initiative with the aim of creating sustainable improvements in the capacity to deliver public services in a more joined up manner. A key principle of the programme is that investment is provided in return for reform.

Libra

The Libra application replaces the magistrates' courts' existing IT systems with a single national case and accounts management system. With the introduction of Libra all courts are able to adopt national standard ways of working to maximise efficiency and improve customer service. As courts go live links to criminal justice partners such as the police are also being deployed, improving information sharing, reducing double keying and supporting joined up justice.

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.

List of witnesses to attend court (LWAC)

This is produced by the CPS and used to notify the 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 Witness No Justice (NWNJ)

Explained in annex B following.

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.

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 Interviews with Witnesses

Explained in annex B following.

Prosecutors' Pledge

Explained in annex B following.

Public Service Agreement (PSA)

Government targets for the public sector.

Quality of Service Commitment

Explained in annex B following.

Special measures

Explained in annex B following.

Summons

An order to appear or produce evidence in a court.

Vacated trial

Prior to the trial date a request to vacate the trial (release the allocated court time slot) may be made by the prosecution or defence if an unexpected difficulty has arisen, e.g. a witness is now unable to attend. A further listing for trial may or may not be required and the court time vacated may or may not be filled with another case.

Victims' Advocates Scheme

Explained in annex B following.

Victim Focus Scheme

Explained in annex B following.

Victim Personal Statement Scheme

Explained in annex B following.

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.

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.

Victim and Witness Care Delivery Unit

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.

Vulnerable or intimidated witnesses

The Youth and Criminal Evidence Act 1999 defines vulnerable witnesses as being children and young people under 17 years of age and those who suffer from a physical or mental incapacity. Intimidated witnesses are those who are in fear or distress about giving evidence, which may reduce the quality of that evidence - for example victims of sexual offences.

Witness care units (WCUs)

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, for example help with childcare or travel arrangements.

Witness Charter

Explained in annex B following.

Witness champion

In each HMCS 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

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.

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 that is underway, as it happens.

B SUMMARY OF KEY INITIATIVES AND DEVELOPMENTS TO SUPPORT VICTIMS AND WITNESSES

The following list is not intended to be exhaustive, but indicative of the many victim and witness related initiatives and developments.

Special measures

The Youth Justice and Criminal Evidence Act 1999 provides 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, screens around the witness box, evidence given in private, removal of wigs and gowns by those in the court room, video recorded cross-examination, examination of the witness through an intermediary and aids for communication through a communicator or interpreter. Some measure have been available for many years, for example screens, whilst others only more recently such as intermediaries.

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 dropped 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.

Victim Personal Statement Scheme (VPS)

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.

No Witness No Justice (NWNJ)

An initiative launched on a tri-partite basis by OCJR in 2003-04 which was to be implemented and delivered by LCJBs. This established 14 minimum requirements (subsequently revised to 16) to support witnesses through the CJS process, underpinned by a number of primary and secondary performance measures. The scheme is based on two main principles, a needs assessment approach for all witnesses (in cases where there is a not guilty plea) and the introduction of dedicated witness care units which are responsible for providing access to support and information from the point of charge to case completion. The initiative was signed over to LCJBs by the national project team in autumn 2006.

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.

Every Witness Matters strategy

The HMCS 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 HMCS is taking to improve the services it provides to victims and witnesses. HMCS 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.

Code of Practice for Victims of Crime (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 are responsible for reporting progress to OCJR, but systems for monitoring such are as yet under developed. In many cases the delivery of NWNJ requirements and those contained in the Code have been run together.

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.

Witness Charter

Designed to build on the Victims' Code this sets out core standards of service that all prosecution and defence witnesses should receive from the police and other criminal justice agencies. This is non-statutory and was piloted in the ten Beacon areas in 2007-08. It is currently being implemented across England and Wales by all agencies with the exception of the police who were expected to adopt the Charter in 2009-10.

Pre Trial Witness Interview Scheme

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.

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.

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 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.

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.

C INSPECTION INDICATORS

- 1 Victims⁴⁸ are supported and kept properly informed during the initial investigation and if charges in their case are not brought or are dropped
 - 1 Victims are kept informed of progress during the initial investigation and subsequently, and such activity is properly recorded.
 - 2 In cases where no charge is made, or an alternative to prosecution decided, reasons are explained to victims.
 - 3 Proper explanations are given to victims if their case is withdrawn or discontinued, or the charge is substantially reduced.
 - 4 Opportunities are given to victims in relevant cases to present a Victim Personal Statement to the court.
 - 5 Action to support victims takes account of their differing needs (including for instance specific language or disability needs or other vulnerable groups) and there is equality of treatment.
 - 6 Victims are provided with information about Victim Support and, if they wish, receive support from them.
 - 7 Effective performance management and training is supportive of service delivery to victims.
- 2 The continued involvement and commitment of victims who are witnesses⁴⁹ and other witnesses is ensured through early consideration of their needs and regular receipt of information throughout their case
 - 1 The needs of witnesses are identified during the initial investigation and correctly recorded.
 - 2 Witness needs are properly considered at the pre-charge stage and acted upon.
 - 3 Vulnerable and intimidated witnesses are identified and appropriate special measures applied for at the right time.
 - 4 Children and young people as witnesses are given appropriate consideration.
 - 5 Witnesses are given all possible support to encourage them to attend the trial.
 - 6 Witnesses receive timely and accurate information about relevant court hearings and outcomes, including notification when a case is dropped.
 - 7 Action to support witnesses takes account of their differing needs (including for instance specific language or disability needs or other vulnerable groups, including the need for an intermediary) and there is equality of treatment.
 - 8 Witnesses' requests for information are responded to effectively by criminal justice agencies.
 - 9 Effective performance management and training is supportive of service delivery to witnesses.
- 3 Victims and witnesses of the most serious crimes are supported by special liaison arrangements
 - 1 Victims and witnesses of serious crimes are supported by appropriate liaison arrangements, for instance family liaison units/officers and equivalents and these are co-ordinated for the benefit of the victim and dovetail with standard arrangements in the area.
 - 2 Support provided to victims and witnesses of the most serious crimes takes account of their differing needs (including for instance specific language or disability needs or other vulnerable groups, including the need for an intermediary) and there is equality of treatment.

⁴⁸ Victims and witnesses (many of whom will also be victims) have been separated out in the inspection indicators due to the differing requirements in respect of communication with and support offered to them.

- 4 Arrangements at court enable victims who are witnesses and other (prosecution and defence) witnesses to participate fully
 - 1 Witnesses receive the information they need before the trial including about court proceedings and the role of witnesses, as well as courthouse facilities and how to get to the courthouse (prosecution and defence witnesses).
 - 2 The impact attendance has on victims and witnesses is considered.
 - 3 Witnesses receive the support they need prior to and during their attendance at court as part of a full needs assessment, including the opportunity of court familiarisation visit (prosecution and defence witnesses).
 - 4 Special measures granted to witnesses are made available on the day of the trial (prosecution and defence witnesses).
 - 5 Support arrangements enable children and young people to be fully effective as witnesses.
 - 6 Action is taken to minimise waiting times for witnesses and they are kept advised as to the progress of their case including the reasons for any delays and adjournments (prosecution and defence witnesses).
 - 7 Witnesses are treated well including being provided with any necessary assistance on arrival and treated courteously while in the courthouse.
 - 8 Witnesses are provided with a safe, secure and comfortable environment which is free from intimidation, including facilities for witnesses with disabilities (prosecution and defence witnesses).
 - 9 Action to support victims takes account of their differing needs (including for instance specific language or disability needs or other vulnerable groups) and there is equality of treatment.
 - 10 Witnesses receive expense payments promptly.
 - 11 Effective performance management and training is supportive of service delivery to victims and witnesses.

- 5 Criminal justice agencies work together and co-operate to meet the expected standards of service for both victims and witnesses
 - 1 There is clear leadership in respect of the service provided to victims and witnesses, underpinned by clear objectives and plans and governance arrangements.
 - 2 Clarity of roles and communication between criminal justice agencies and partners underpins effective support of and communication with victims and witnesses (NB includes IT links).
 - 3 Witnesses receive an effective and efficient service from witness care units.
 - 4 Performance in respect of the service provided to victims and witnesses is effectively managed and leads to performance improvements.

D OUTCOMES OF OBSERVED TRIALS

In each area we focused our observations on trials that were listed to be heard during the period of our visit, generally including five each in the Crown Court and magistrates' courts. Where possible we observed part of the trial and interviewed witnesses. Key findings from these observations contributed to our findings in the body of this report. A summary of the outcomes of the 70 trials is as follows:

- 73 victims were warned to attend these trials to give evidence together with 102 civilian witnesses, 175 witnesses in total.
- In total 26 of the 70 trials (37.1%) were effective either during the period of our observation or subsequently. Only 11 out of 70 cases ran as an effective trial on the first trial date with witnesses giving evidence. A further 11 were effective on the second trial date and four on the third or subsequent dates.
- In 24 cases (34.3%) the defendant(s) pleaded guilty as charged or on some basis or to an alternative charge on the day of trial when witnesses had attended court. Some of these were not on the first trial date.
- In five cases (7.1%) the defendant(s) pleaded guilty before the day of trial or notified there would be a guilty plea so witnesses were able to be de-warned and did not attend court unnecessarily.
- In total 12 of the 70 cases (17.1%) were discontinued, four of these before the day of trial and eight on the day.
- As at mid December 2008, three of the 70 trials (4.3%) were still outstanding and remaining for trial.
- There were 46 victims and witnesses flagged on the files, CMS or WMS as being vulnerable and/or intimidated.
- 36 applications for special measures were made. All were granted by the court but only 20 of them (55.6%) were made within the timescales prescribed.
- 16 witness summons were sought. In response to the summons ten attended and six did not. In just one case a witness warrant was sought and that witness was arrested and brought to court only for the CPS to then offer no evidence and discontinue the case.
- Seven victims did not attend court or attended but refused to give evidence and the cases could not proceed.
- In cases involving five witnesses who did not attend the case was able to proceed.

E VICTIM AND WITNESS INTERVIEWS – SUMMARY OF KEY FINDINGS

	Yes	No	NA/ Unrecorded	Total
Are you a prosecution witness?	89 98.9%	1 1.1%	1	91
If yes, are you also a victim of crime in this particular case?	44 49.4%	45 50.6%	2	91
Are you a defence witness?	2 2.2%	87 97.8%	2	91
Have you given evidence in a criminal trial before?	23 27.1%	62 72.9%	6	91
Were you given the opportunity of a pre-trial visit to the court?	69 76.7%	21 23.3%	1	91
If yes, did you take this up?	17 24.6%	52 75.4%	22	91
Were you told about the possibility of special measures, such as a screen or video link, that could help you give evidence at court?	58 66.7%	29 33.3%	4	91
If yes, was an application made for special measures?	25 43.9%	32 56.1%	34	91
If yes, have any special measures been made available to you?	23 85.2%	4 14.8%	64	91
Were you given sufficient information about the courthouse and the proceedings before you came to court today?	66 74.2%	23 25.8%	2	91
Were you given the opportunity to view the DVD called Being a Witness at Court?	29 34.9%	54 65.1%	8	91
Were you told about the services offered by Victim Support?	40 74.1%	14 25.9%	37	91
If yes, did you take this up?	10 26.3%	28 73.7%	53	91
Were you told about making a personal statement?	22 50.0%	22 50.0%	47	91
If yes, did you take this up?	17 77.3%	5 22.7%	69	91
Did the prosecutor introduce himself to you prior to the trial?	67 80.7%	16 19.3%	8	91

F FILE SAMPLE – KEY FINDINGS

In each area visited a sample of police, CPS and WCU files (where possible in the same case) were read against a checklist of questions. The key findings are as set out in the tables below.

Police files	Y	N	UR	NA	Total files	Total Y/ N/ UR
Have reasonable steps been taken to identify vulnerable or intimidated victims at the investigation stage?	31 56.4%	19 34.5%	5 9.1%	3	58	55
Where appropriate, has the investigator properly identified victims and witnesses who are vulnerable?	9 60.0%	6 40.0%	0 0%	43	58	15
Where appropriate, has the investigator properly identified victims and witnesses who are intimidated?	19 57.6%	13 39.4%	1 3.0%	25	58	33
Has an appropriate initial needs assessment for all victims and witnesses been completed by police?	14 25.0%	5 8.9%	37 66.1%	2	58	56
Have the police recorded any views the victim or witness has expressed about applications for special measures?	16 32.7%	16 32.7%	17 34.7%	9	58	49
If the case involves a vulnerable or intimidated victim or witness, has appropriate consideration been given by the investigator to the use of special measures?	12 27.9%	10 23.3%	21 48.8%	15	58	43
Is there evidence that the Victim Personal Statement Scheme been explained to the witness?	34 58.6%	14 24.1%	10 17.2%	0	58	58
Where appropriate, was a Victim Personal Statement made available to the charging prosecutor?	17 37.0%	14 30.4%	15 32.6%	12	58	46
Have the victims been referred appropriately (i.e. in compliance with force policy) to Victim Support?	14 26.4%	5 9.4%	34 64.2%	5	58	53
Have all vulnerable or intimidated victims been notified within one working day of the suspect's arrest?	26 59.1%	1 2.3%	17 38.6%	14	58	44
Have all other victims been notified within five working days of the suspect's arrest?	11 37.9%	1 3.4%	17 58.6%	29	58	29
Have the police notified the victim of any decision to bring criminal proceedings?	38 66.7%	1 1.8%	18 31.6%	1	58	57
Where appropriate, has all relevant victim and witness information been recorded on the MG3/A by the investigator?	27 46.6%	21 36.2%	10 17.2%	0	58	58
Where appropriate, has the investigator noted down any special measures requirements on the MG3/A?	5 12.2%	27 65.9%	9 22.0%	17	58	41
Where appropriate, has the investigator detailed any necessary evidence needed to support an application for special measures on the MG3/A?	4 10.3%	24 61.5%	11 28.2%	19	58	39

Y: Yes; N: No; NA: Not applicable; UR: Unrecorded

CPS files	Y	N	UR	NA	Total Files	Total Y/ N/ UR
Has the charging lawyer discussed the needs of victims and witnesses with the investigator?	24 34.3%	5 7.1%	41 58.6%	4	74	70
Where appropriate, has the charging lawyer properly identified victims and witnesses who are vulnerable?	11 55.0%	8 40.0%	1 5.0%	54	74	20
Where appropriate, has the charging lawyer properly identified victims and witnesses who are intimidated?	19 50.0%	17 44.7%	2 5.3%	36	74	38
Where appropriate, has the charging lawyer considered the possibility of special measures?	24 50.0%	21 43.8%	3 6.3%	26	74	48
Has the charging lawyer identified cases where the victim or witness may require early intervention?	7 25.9%	16 59.3%	4 14.8%	47	74	27
Where appropriate, has a Victim Person Statement been used by the prosecutor to make decision about the case?	13 30.2%	27 62.8%	3 7.0%	31	74	43
Have issues of victim and witness credibility been considered by the prosecutor at the consultation stage?	56 83.6%	8 11.9%	3 4.5%	7	74	67
Where appropriate, has the charging lawyer noted down any special measures requirements?	14 36.8%	23 60.5%	1 2.6%	36	74	38
Where appropriate, has the charging lawyer completed an action plan requesting further evidence or information to be made available in support of any special measures application?	9 25.7%	25 71.4%	1 2.9%	39	74	35
Where appropriate, has the charging lawyer requested a Victim Personal Statement to be taken?	0 0%	41 97.6%	1 2.4%	32	74	42
Does the file contain a correctly completed MG11(t) [reverse of the MG11] form?	54 77.1%	10 14.3%	6 8.6%	4	74	70
Does the file contain a correctly completed MG2 form?	18 32.1%	37 66.1%	1 1.8%	18	74	56
Does the file contain a correctly completed MG6 form?	49 66.2%	24 32.4%	1 1.4%	0	74	74
Does the file contain a correctly completed MG9 form?	56 88.9%	6 9.5%	1 1.6%	11	74	63
Does the case file contain properly completed and up to date witness availability (MG10) forms?	49 77.8%	11 17.5%	3 4.8%	11	74	63
Has the CPS given the WCU timely notification of those witnesses required to give live evidence at court?	48 85.7%	8 14.3%	0 0%	18	74	56
Where appropriate, have all special measures applications been timely?	6 40.0%	9 60.0%	0 0%	59	74	15

Were any applications made for special measures?	15	30	0	29	74	45
	33.3%	66.7%	0%			
If so, were the correct special measures requested?	15	0	0	59	74	15
	100%	0%	0%			
In appropriate cases, has consideration been given to using the witness summons or witness warrant procedure to support or compel a victim or witness to attend court?	23	6	1	44	74	30
	76.7%	20.0%	3.3%			
Have all victims been notified of any decision to drop or substantially alter a charge?	34	10	0	30	74	44
	77.3%	22.7%	0%			
Where appropriate, has a DCV letter been sent expeditiously?	20	14	0	40	74	34
	58.8%	41.2%	0%			
Where a DCV letter has been sent, was it of satisfactory quality and sensitivity?	24	10	0	40	74	34
	70.6%	29.4%	0%			
In appropriate cases, has the victim been offered a meeting with the prosecutor?	3	1	0	70	74	4
	75.0%	25.0%	0%			

Y: Yes; N: No; NA: Not applicable; UR: Unrecorded

WCU files	Y	N	UR	NA	Total Files	Total Y/ N/ UR
Has the appropriate advice pack been provided?	37 62.7%	4 6.8%	18 30.5%	3	62	59
Have all victims been provided with information about local support services and the contact details for those services?	28 50.9%	7 12.7%	20 36.4%	7	62	55
If so, have all victims been provided with the information within five working days?	27 96.4%	0 0%	1 3.6%	34	62	28
Have the victims been referred appropriately to Victim Support?	27 49.1%	5 9.1%	23 41.8%	7	62	55
Has an appropriate initial needs assessment for all victims and witnesses been completed by the WCU?	33 56.9%	12 20.7%	13 22.4%	4	62	58
Has a full needs assessment been made for all victims in not guilty plea cases?	30 68.2%	11 25.0%	3 6.8%	18	62	44
Have steps been taken to obtain up to date witness availability (MG10) forms for all victims and witnesses?	44 95.7%	1 2.2%	1 2.2%	16	62	46
Have all victims been notified of any requirement to give live evidence within in one working day of being notified by the CPS?	35 74.5%	11 23.4%	1 2.1%	15	62	47
Have all victims been notified of all court hearings within in one working day of being notified by the court?	18 34.6%	12 23.1%	22 42.3%	10	62	52
Have all victims been provided with the Witness in Court leaflet?	33 60.0%	0 0%	22 40.0%	7	62	55
Where appropriate, have all vulnerable or intimidated victims been informed of the outcome of any special measures applications within one day?	2 33.3%	2 33.3%	2 33.3%	56	62	6
Have all victims been informed of the outcome of the case and, where appropriate, given an explanation of any sentence?	43 81.1%	7 13.2%	3 5.7%	9	62	53
Where appropriate, have all victims been informed of the issue and execution of any warrants within one working day of receiving the information?	1 50.0%	1 50.0%	0 0%	60	62	2
Where relevant, have up to date witness availability MG10 forms been made available in time for the PCMH or PDH?	25 86.2%	2 6.9%	2 6.9%	33	62	29
Has the WCU used the victim's or witness's preferred method of communication when contacting that individual?	45 91.8%	2 4.1%	2 4.1%	13	62	49
Has all relevant information about victims and witnesses been passed on to the CPS expeditiously?	46 88.5%	2 3.8%	4 7.7%	10	62	52
Has the WCU logged all witness communications on WMS?	53 85.5%	5 8.1%	4 6.5%	0	62	62

Y: Yes; N: No; NA: Not applicable; UR: Unrecorded

G NO WITNESS NO JUSTICE MINIMUM REQUIREMENTS

Needs assessment

- 1 An initial needs assessment is undertaken for all civilian victims and witnesses at point of statement. The MG11 has been revised for this purpose.
- 2 At the initial recording of an not guilty plea, witness care units (WCUs) will contact all civilian victims and witnesses making reference to:
 - progression of the case;
 - Victim Support and Witness Service referrals;
 - any special needs relating to that victim or witness;
 - witness availability; and
 - establish whether there is any intimidation.

When the LWAC (list of witnesses warned to attend court) is produced the WCU will conduct a full needs assessment for all civilian victims and witnesses who are warned to attend trial.

- 3 Charging prosecutors will ensure that victims' and witnesses' needs have been considered at the point of charge.

WCU structure

- 4 Areas will establish dedicated multi agency WCUs to manage victims and witnesses from the point of charge to the conclusion of a case, including witness warning responsibilities.
- 5 Areas will develop and agree a multi agency protocol that outlines the roles, responsibilities and commitments of each agency.
- 6 Areas must structure their WCUs to provide victims and witnesses with a single point of contact.

WCU processes

- 7 Arrangements will be made to consult with victims, witnesses and community groups on an ongoing basis.
- 8 Areas will develop a support/contact directory which is reviewed and updated on an ongoing basis.
- 9 All front line officers, prosecutors, caseworkers and other relevant members of staff will receive appropriate communications and training.
- 10 Areas will use the simple electronic monitoring system in the WCU to monitor the local performance measures.

Communication and information

- 11 All locally produced written materials provided to victims and witnesses will be reviewed and best practice materials developed. The review will include consideration of issues of equality and diversity. Regional equality and diversity officers should assist in these reviews.

12 Areas will provide information to victims and witnesses as follows:

For a case where a guilty plea is not indicated at first hearing, or for appeals against conviction, all victims and witnesses will be informed:

- following first hearing;
- following a not guilty plea or notice of appeal;
- if a case is dropped;
- of any successful bail application if a defendant is initially remanded in custody;
- of the outcomes of any relevant special measures applications;
- of the outcome of any preliminary hearing;
- following any committal hearing;
- following any committals for sentence; and
- of outcomes and sentences.

13 For cases where a guilty plea is indicated at first hearing, or where the case is dropped prior to or at first hearing, or for appeals against sentence, all victims and witnesses will be informed of the outcome and, if applicable, sentence.

14 It is expected that witnesses will be provided with the information or letters sent by the end of the working day following the court hearing.

15 Witness care officers will communicate with victims and witnesses via their preferred means of contact whenever possible (including phone call, letter, e-mail or text). The default preferred means of contact is telephone.

16 All victims and witnesses must be provided with outcome and sentence information in a timely fashion, thanked for their contribution to the case, and offered support from the relevant support agency.

H DEFINITION AND ASSESSMENT OF VULNERABLE AND INTIMIDATED VICTIMS

The definition of vulnerable and intimidated victims is set out in the Youth Justice and Criminal Evidence Act 1999. For the purposes of the Victims' Code vulnerable and intimidated victims are defined as such at the time of the offence, rather than at the time of hearing as specified in the 1999 Act.

For the purposes of the Code a vulnerable victim is *eligible for an enhanced service under the Code*

- *if under the age of 17 at the time of the offence; or*
- *if the service provider considers that the quality of evidence given by the victim is likely to be diminished by reason of any circumstances falling within the following subsection.*

The circumstances falling within this subsection are:

- *that the victim*
 - suffers from mental disorder within the meaning of the Mental Health Act 1983,*
 - otherwise has a significant impairment of intelligence and social functioning;*
- *that the victim has a physical disability or is suffering from a physical disorder.*

For the purposes of the Code an intimidated victim is eligible for an enhanced service under the Code if the service provider is satisfied that the quality of evidence given by the victim is likely to be diminished by reason of fear or distress on the part of the victim in connection with testifying in the proceedings.

In determining whether a victim falls within the definition of an intimidated victim as above the service provider must take into account, in particular:

- *the nature and alleged circumstances of the offence to which the proceedings relate;*
- *the age of the victim;*
- *such of the following matters as appear to the service provider to be relevant, namely –*
 - the social and cultural background and ethnic origins of the victim,*
 - the domestic and employment circumstances of the victim, and*
 - any religious beliefs or political opinions of the victim;*
- *any behaviour towards the victim on the part of:*
 - the accused,*
 - members of the family or associates of the accused, or*
 - any other person who is likely to be an accused or a witness in the proceedings.*

Source: The Code of Practice for Victims of Crime, OCJR, October 2005.

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HM Crown Prosecution Service Inspectorate
London Office:
26 – 28 Old Queen Street
London SW1H 9HP
Tel. 020 7210 1197

HM Inspectorate of Court Administration
13th Floor, The Tower
102 Petty France
London SW1H 9AJ
Tel. 020 3334 4180

HM Inspectorate of Constabulary
Ashley House
2 Monck Street
London SW1P 2BQ
Tel. 020 7035 2004

Website:
www.hmcpso.gov.uk
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