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support

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## Out of the shadows

Victims' and witnesses' experiences  
of attending the Crown Court

Report by Gillian Hunter, Jessica Jacobson and Amy Kirby

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*It's just very frightening, very daunting when you walk in and you see all the chairs and the benches and everything set out, and then you see all these people with their wigs on and the gowns.*

**Julia; witness in sexual offences case**

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# Acknowledgements

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We would like to thank the victims and witnesses who gave up their time to speak to us about what were often very difficult events in their lives. We also thank the Witness Service for their help in recruiting witnesses to our study and to HM Courts and Tribunal Service and the Resident Judges for giving their permission to conduct this research in the courts. The study on which this report is based was funded by the Economic and Social Research Council. This work was undertaken as part of a wider study which also entailed interviews with defendants, interviews with criminal justice professionals, and observations of court hearings.

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Victim Support runs a Witness Service in all criminal courts in England and Wales. In 2011/12 it supported 240,000 people including 50,000 vulnerable and intimidated witnesses. The Witness Service is funded by the Ministry of Justice.

# Executive summary

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The criminal justice system depends on the cooperation of victims and witnesses in reporting crime, providing statements to police and, if the case progresses to a trial, giving evidence in court. How victims and witnesses are treated by the criminal justice system is likely to affect their confidence and trust in that system as well as the likelihood of their reporting crime or agreeing to attend court as a witness in the future.

Over the past 15 years or so, various policies and protocols have been developed to improve the treatment of victims and witnesses during their contact with the criminal justice system. Developments include the provision of separate waiting areas in court, extra support for vulnerable or intimidated witnesses to help them give evidence, and a dedicated point of contact for witnesses in the form of Witness Care Units. Yet victims and witnesses continue to be referred to as the 'poor relation' in a criminal justice system that is often seen as weighted in favour of the defendant or overly focused on 'cases' rather than individuals. Currently, the government is consulting on provision for victims and witnesses, with the stated aim of remedying weaknesses in the existing system of support and entitlements.

Our study examined the experiences of 44 victims and witnesses from two Crown Courts in England. These were victims and prosecution witnesses in cases covering a range of crimes, including violent and sexual offences. All interviewees were asked to describe the experience of attending court, and for their views on the fairness or otherwise of the court process and outcomes. The study findings should help inform improvements to both policy and practice aimed at supporting victims and witnesses through the court process.

## Key findings

- Most witnesses were very anxious about coming to court. The court was an unknown and intimidating environment; and they worried about coming face-to-face with the defendants and possible reprisals for giving evidence. Nevertheless, most of the witnesses we interviewed attended court voluntarily, motivated by a sense of duty to protect others from becoming victims and to secure justice for themselves or for others.
- There was much frustration about lengthy waiting times; both before the case came to court and while at court. Practical difficulties relating to work and childcare arrangements were reported, but so too was the anxiety and stress associated with the waiting. Witnesses were often given little warning to attend court or conversely, late notice that a trial had been postponed. Both of these scenarios exacerbated anxiety and inconvenience.
- Pre-trial visits and support provided by the Witness Service were greatly appreciated by witnesses. The kindness shown by Witness Service volunteers was praised, and the separate waiting areas staffed by the Witness Service were felt to offer a safe haven in court. However, despite the existence of separate waiting areas, chance encounters with defendants sometimes occurred at court, and were reported as one of the most distressing aspects of the witness experience.

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- The role of the prosecution barrister was often misunderstood, with witnesses under the misapprehension that he or she was acting on their behalf. Limited or no contact with the prosecution barrister, and a lack of information about the progress of the trial or explanations for delays, served to heighten witnesses' feelings of marginalisation in the process. In contrast, where barristers made the effort to introduce themselves to witnesses and to update them on the case, this was highly valued by witnesses.
  - Cross-examination was cited by witnesses as a particularly challenging aspect of the court experience; and the formal or legal language of the courtroom also posed difficulties for some. Witnesses were appreciative of judges' interventions to ensure they understood a barrister's questioning or to prevent overly hostile or aggressive questioning.
  - Some witnesses expressed frustration about how their testimony was constrained by rules about admissibility of evidence or by the particular focus of the prosecution case. This left them feeling that they had not been permitted to tell their side of the story or to explain events in full as they saw them.
  - The Victim Personal Statement is intended to offer victims a means of expressing how they have been impacted by the offence, and thus potentially lessens the frustrations associated with their marginalised role within the court process. However, we found that not all our victim interviewees were aware of having been offered the opportunity to make a Victim Personal Statement, or understood how the statement had been or could have been used in court.
  - 'Special measures' provide support for vulnerable or intimidated witnesses: for example, by allowing them to give evidence from behind a screen. These measures were welcomed by those who received them; but in some cases witnesses were given contradictory information about special measures, or did not know whether they were being offered the support until the day of trial.
  - Our interviewees' overall feelings about the court process were shaped both by their treatment within it and by the outcome of the case. In most of the cases, the defendant was found guilty on all or some counts, or belatedly pleaded guilty, which made the witnesses feel that their stressful and lengthy dealings with the criminal justice system had been worthwhile. Notably, almost all of our interviewees stated that they would be willing to give evidence again in a criminal case; or, at least, in a case involving a relatively serious offence.
  - Our findings highlight how important it is that victims and witnesses are treated with consideration and respect by the range of professionals with whom they come into contact; including Witness Care Unit staff, the police, court staff, Witness Service staff and volunteers, barristers and the judge. Considerate and respectful treatment makes the difficulties and frustrations of coming to court more manageable, and helps to reduce any sense of marginalisation.

# Recommendations

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The findings of our study demonstrate the effectiveness of much existing provision for victims and witnesses in helping them to feel valued and supported. We have also found, however, that there are aspects of the court process which continue to frustrate, confuse and cause distress. The recommendations below highlight both the positive aspects of current provision that can be further built upon, and the gaps and weaknesses in provision that should be addressed.

- The Witness Service plays a critically important part in supporting victims and witnesses attending court, and thereby easing what is often a highly stressful situation. The service achieves this by offering practical assistance and information, hosting pre-trial visits, and providing waiting facilities. Equally important, at a time of anxiety and potential distress, is the informal support offered by Witness Service staff and volunteers: the 'friendly face', words of comfort and empathetic presence. Continued resourcing of the Witness Service is essential to sustain witnesses' confidence in and satisfaction with the court process.
- Despite the existence of Witness Service-run waiting facilities, it is not unusual for witnesses to encounter defendants in the public areas of the court building, including in entrance halls, just outside the court building, and in the cafeteria. More needs to be done to prevent these chance meetings, for example by staggering times for entry and exit to the court.
- Witnesses often waited considerable lengths of time before their case came to trial. Efforts should be made to reduce the time between incident and trial date.
- Cancellations and adjournments of court hearings are frustrating and stressful for victims and witnesses. More needs to be done to reduce this and all possible steps should be taken to minimise delays. Where these are unavoidable, the impact on victims and witnesses should be recognised. Updating victims and witnesses about the progress of cases and informing them about the reasons for delays can help to mitigate the impact. Consideration should be given to limiting the number of times any case can be put on a 'warned list'.
- Special measures can very substantially ease the difficulties of giving evidence. Yet, the process by which witnesses are offered special measures lacks clarity and consistency. Applications for special measures by the police and Crown Prosecution Service should be made in a timely manner, to ensure that witnesses are informed well in advance of the trial about how they will give their evidence.
- Courts should ensure that the equipment for special measures, for example audio-visual equipment, is fit for purpose and in full working order.

- Victims and witnesses should have access to clear and consistent information about the court process. For example, the role of the prosecution barrister, legal concepts such as the burden of proof, and the restrictions on what can be offered as evidence, need to be explained at the outset. There should also be more clarity about whose role it is to provide this information, and when.
- Prosecution barristers should ensure that, without fail, they fulfil their duty to introduce themselves to witnesses and update them on the progress of their case.
- Cross-examination underpins our adversarial system. It will always be nerve-wracking, but this can be reduced where witnesses know what to expect and are reassured that it is not a personal attack but an integral part of the court process. The judge's role as a neutral arbiter in court is crucial to reducing some of the emotional strain.
- Witnesses are often confused by legal jargon and the unfamiliar language used in court. Judges and other court officials should emphasise to the witness that they can ask for explanations or clarification of anything they do not understand when giving their evidence.
- Victims need to be clearly informed about when a Victim Personal Statement is being taken and how it may be used in court; equally, criminal justice professionals need to be better informed about the purpose of these statements.
- It is in the nature of the adversarial process that the role of victims and witnesses in the courtroom is constrained. Despite this, criminal justice professionals can do much to ensure that victims and witnesses feel they are valued rather than taken for granted: particularly, by being considerate and respectful in their interactions, and by providing clear, consistent and timely information about the court process.





Posed by model



# 1. Introduction

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Victims and witnesses are crucial to our criminal justice system. The system is dependent on their cooperation in reporting crime, providing statements to police and, if the case progresses to a trial, giving evidence in court. How victims and witnesses are treated is likely to affect their confidence and trust in that system as well as the likelihood of their reporting crime or agreeing to attend court as witnesses in the future.

Over the past 15 years, a series of policies and protocols developed by government and the key criminal justice agencies have sought to improve the treatment of victims and witnesses during their contact with the criminal justice system. Initiatives include the 1998 report *Speaking up for Justice* and subsequent legislation for 'special measures' for supporting vulnerable and intimidated witnesses in court; the introduction of Victim Personal Statements in 2001; and the 2003-4 'No Witness, No Justice' pilot aimed at improving provision for witnesses, which led to the establishment of Witness Care Units. The standards of service that victims and witnesses could expect from the range of criminal justice agencies were set out in the Prosecutors' Pledge, the Code of Practice for Victims of Crime (Victims' Code) and the Witness Charter, which were introduced over the years 2005 to 2007. Currently, the government is consulting on provision for victims and witnesses, with the stated aim of remedying weaknesses in the existing systems of support.<sup>1</sup> As part of this consultation, both the Victims' Code and Witness Charter are being reviewed and revised. (See box on page 10, for more details on provision for victims and witnesses.)

## **What we know about victims' and witnesses' experiences of court**

Between 2005 and 2011, the Ministry of Justice commissioned a national survey of adult witnesses' and victims' experiences of the criminal justice system – known as the WAVES survey. This involved approximately 35,000 telephone interviews annually with victims and prosecution witnesses across England and Wales from cases which had resulted in a charge and had been closed.

Findings from the last survey (2009/10) showed that 84% were satisfied with their overall contact with the criminal justice system, but that satisfaction was more likely in cases that resulted in a conviction. The strongest influences on willingness to engage again with the criminal justice system were satisfaction with their contact with the system and the outcome of the case. The main issues of concern for those attending court related to coming into contact with the defendant and his or her family (45%); being cross-examined (36%); having time off work (26%); and the expenses involved in attending court (20%). The WAVES survey has since been discontinued and there is currently no regular way of assessing the quality of victims' and witnesses' contact with the criminal justice system.

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<sup>1</sup> Ministry of Justice (2012) *Getting it right for victims and witnesses: the Government response*

## Some key provisions for victims and witnesses

**The Witness Service** was launched in the Crown Court in 1994; and by 2003 the service had a presence in all criminal courts in England and Wales. It is a part of the national charity Victim Support and offers support to witnesses when they attend court. The Witness Service provides pre-trial visits which enable witnesses to see a courtroom prior to the trial and to learn about court procedures; a quiet place for witnesses to wait before giving evidence; accompaniment to the courtroom; a link to court staff; and the opportunity for witnesses to talk over the case when it has ended and receive further information as required. The large majority of the support work of the Witness Service is undertaken by volunteers.

**Special measures** to help vulnerable and intimidated witnesses give evidence were introduced by the Youth Justice and Criminal Evidence Act 1999. They enable witnesses to give evidence from behind screens or via live video-link, or with the help of a registered witness intermediary; for the public gallery in court to be cleared; for judges and barristers to remove their wigs and gowns; and for the use of video-recorded interviews as evidence-in-chief.

**Witness Care Units** were established in 2005, in the wake of concerns about the high number of court cases that failed to proceed because witnesses did not turn up at court, and low levels of satisfaction with the criminal justice system among witnesses. The units are collaborations between police and the Crown Prosecution Service, although they are now mainly staffed by the police. Their role is to manage the care of victims and witnesses from the charging of defendants through to the conclusion of the case; specifically, they are intended to provide:

- a single point of contact for victims and witnesses
- assessment of witnesses' support needs to give evidence
- guidance through the criminal justice service and co-ordination of support
- information on case progression and outcomes.

**Separate waiting facilities:** the Courts Service has a legal requirement to make sure that witnesses waiting to give evidence have a separate waiting area and seat in the courtroom away from the defendant and their supporters.

While the WAVES survey had revealed relatively high levels of satisfaction among victims and witnesses, more in-depth government-commissioned reviews have revealed some disparity between the 'best intentions' of policy and the realities experienced by many witnesses and, particularly, victims. For example, the 2009 report *Redefining Justice*,<sup>2</sup> by then Victims' Champion Sara Payne, reported on findings of focus groups and seminars with victims, witnesses and professionals and volunteers who support them. Issues raised by participants included the long waiting times at court; late applications for, or inappropriate offers

of, 'special measures'; and the lack of support provided to victims post-trial. There was also a common view that the needs and concerns of victims and witnesses are side-lined by a system which has a main focus on achieving successful prosecutions; a theme echoed also in a 2010 paper by then Victims' Commissioner Louise Casey, who argued that victims are the 'poor relation' in the criminal justice system.<sup>3</sup>

Our understanding of victims' and witnesses' experiences of court has also been advanced by a growing body of academic research on

<sup>2</sup> Payne, S. (2009) *Redefining Justice: Addressing the individual needs of victims and witnesses*, London: Petty France

<sup>3</sup> Casey, L. (2011) 'Ending the Waiting Game: A Plea for Common Sense.' in *Annual Report 2010-2011* Commissioner for Victims and Witnesses. London: Ministry of Justice.

‘procedural justice’, undertaken by Tom Tyler and colleagues. This work explores how people evaluate their contact with the criminal justice system and whether they accept the legitimacy of the courts and other authorities. Procedural justice theorists argue that people’s trust in justice and perceptions of legitimacy tend to reflect the quality of treatment they have received from criminal justice agencies more than the outcomes of their involvement in the justice system. Accordingly, victims’ and witnesses’ experiences of fair and respectful treatment should be the key determinants of their overall evaluation of the court process. There are said to be four key dimensions to procedural justice for court participants: voice (having the opportunity to tell their side of the story); neutrality (viewing the judge as neutral and having the rationale for rulings and decisions made clear to them); respect (respectful and courteous treatment from all officials within the criminal justice system) and trust (that their views are being listened to and considered).<sup>4</sup>

## About our study

Our study was funded by the Economic and Social Research Council (ESRC) and examined the experiences of victims and witnesses in two Crown Courts: one large court in an ethnically diverse urban area, and one medium-sized court in a small provincial city. While the research focused on the Crown Court, the findings also have a direct bearing on victims’ and witnesses’ experiences in magistrates’ courts.

We conducted in-depth interviews with 44 prosecution witnesses, of whom 15 were also direct victims of the offence (henceforth referred to as victim-witnesses). Seven of our interviewees attended court but were not, in the event, called to give evidence. We also interviewed the mother of a victim-witness of sexual offences.<sup>5</sup> All interviewees were asked to describe the experience of attending court, and their views on the fairness or otherwise of the court process and outcomes. The cases in

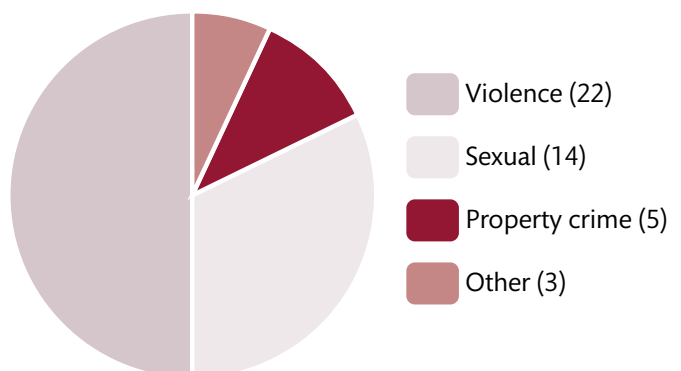
which our interviewees were involved covered a wide range of offences including violent offences, sexual offences and burglary. The large majority of our interviewees (41) had never been to Crown Court before.

The demographic profile of our interviewees is presented in Table 1 below and the offence profile in Table 2.

**Table 1: Demographic profile of interviewees**

Gender		Age			
Male	Female	18-25	26-39	40-59	60+
15 (33%)	29 (67%)	9 (20%)	15 (33%)	15 (36%)	5 (11%)
Ethnicity					
Asian	Black	Mixed	White British	White Other	
3 (7%)	3 (7%)	2 (4%)	33 (76%)	3 (7%)	

**Table 2: Type of offences**



In this report, we present the key findings of our victim and witness interviews. In so doing, we aim to help build a deeper and more nuanced understanding of issues highlighted through the previous WAVES research and other existing work on victim and witness experiences. We have also used our findings to develop a series of recommendations for criminal justice policy and practitioners, which are focused on improving provision for and treatment of victims and witnesses. All the names and some other details about the victims and witnesses we feature here have been changed.

<sup>4</sup> Tyler, T. (2008) ‘Procedural Justice and the Courts’, *Court Review*, 44: 25-31.

<sup>5</sup> This work was undertaken as part of a wider study which also entailed interviews with defendants, interviews with criminal justice professionals, and observations of court hearings.

## 2. Before the trial

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In our interviews with victims and witnesses, we started by asking them about how they felt when first asked to attend Crown Court as a witness for the prosecution. While most witnesses attend court voluntarily, the court can issue a witness summons to compel a reluctant witness to appear. A witness who fails to attend court or give evidence once summonsed may be fined or, in extreme cases, imprisoned for contempt of court. Only three of our interviewees had to be compelled to appear, but most did not relish the prospect. Commonly they worried about repercussions and reprisals from the defendant or the defendant's family, particularly when the defendant was known to live nearby. Dan, for example, had witnessed a violent assault and was worried about the safety of his family:

*The police came in and they said, 'Well what did you see?' And I said, 'Actually, I'm not going to get involved. I've done what I've got to do and I don't want to get involved any further.' ... My problem was, my wife had not long had our child. You get a bit protective. I don't want to be stood in court with a guy who can glass someone in a split second, who I've got to see in town in three years' time when he's out of prison.*

Samantha, witness to a violent assault and criminal damage, expressed similar anxiety:

*I always bump into him and his girlfriend... [they're] always in town. Always around the same sort of hot-spots. But I just have visions of going into town and seeing them again.*

However, often over-riding such concerns was the feeling that it was their duty to appear in court for the prosecution in order to protect others from becoming victims:

*[I felt] a bit nervous, obviously. I mean it's not something you particularly want to have to do. But I felt that I needed to do it because knife crime is getting worse.*

**Stella; witness in case involving possession of an offensive weapon**

*I wasn't comfortable with it. I knew I had to do it for the reason that she did it to such a frail old lady with mental health issues. She was so vulnerable and when she actually got told that someone had done that to her she was just a mess. I thought: I can't let her do that to anybody else.*

**Adam; witness in theft from workplace case**

There were also witnesses who had a close relationship to the victim in the case; for them, their main motivation for appearing in court was the wish to secure justice for their loved one:

*I really wanted to give evidence. I was so angry with him, what he did to my daughter. But as I say, I was also nervous because never being in court like that for that kind of reason – I didn't know quite what to expect. And you hear of so many cases about the way the girl's treated, and the family. So it made me really nervous. But I really wanted to go and get him his punishment.*

**Julia; witness in sexual offences case**

### Arranging trial dates

'Waiting' was a common theme in our interviews. This started with the long wait for the case to come to court. The length of time from the crime first being reported to the police to the sentencing of the defendant ranged from three months to nearly two years. Many of our interviewees talked about having to put their life on hold or of not being able to move on from the crime during that period of waiting.







Much of the contact that the witnesses had with Witness Care Units was taken up with arranging for their attendance on the day of trial. These trial dates were frequently changed and cancelled at short notice. Depending on the nature of the offence, a case might be given a fixed date or, alternatively, be placed on the Crown Court's 'warned list'. In the latter scenario, the witness would be notified of a period of time (usually one week) within which the case would be called if space in court became available. If the case was called during this period, the witness would be telephoned by 5pm the day before and asked to attend court the next day. If, in contrast, none of the dates on the warned list was used for the trial, the case would be placed on a new warned list at some point in the future. Debbie's case, a burglary, was put on four different warned lists before being called on the last day of the fourth list period. She describes how this affected her day-to-day life:

*I couldn't make appointments. I'd just started university, and I felt like I was going to get taken out of lectures potentially to sit around for hours. And it caused me a lot of hassle, really. And I felt I couldn't go to the dentist, couldn't get my hair done. Because I know I can cancel those things, but I almost felt like I shouldn't make plans to do anything.*

In arranging for the attendance of witnesses at trial, the Witness Care Unit is expected to give some consideration to witnesses' work and other commitments. However, several of our interviewees recounted having to rearrange work and other activities to comply with the court dates. For example, one spoke of being unable to make work arrangements as she had been given a series of dates to keep free, with no guarantee that the case would be heard on any of those assigned days:

*It just became a little bit troublesome with my work because I was having to say, 'I can't attend any meetings that week.' But then I was in work on the Monday and Tuesday... And then because it happened three times, I think my work were getting a little bit fed up by the end of it.*

**Chloe; victim-witness of armed robbery**

Tom, a witness of a burglary, reported having difficulties organising childcare for his potential days in court and had a less than helpful response from his liaison officer at the Witness Care Unit:

*I had children to look after – I had to take them into consideration. I gave the court as much notice as possible, but again, during that notification period, the [Witness Care Unit] wasn't very sympathetic to the fact that I had children and even suggested that I take the children into court.*

Our interviewees found that even when a trial had a fixed date, there was no guarantee that it would go ahead as planned. Cancellations were commonplace. Where reasons for delays were known to witnesses, they included a previous trial running over its allotted time; a judge's illness; and a judge being delayed when returning from a holiday abroad. Cancellations were especially difficult for the victims of crime. Elaine, for example, told us about a sexual assault case in which she gave evidence along with her teenage daughter, the victim. She described the stress that both she and her daughter experienced when, after preparing themselves psychologically for going to court, their case was cancelled on two occasions at short notice:

*It was due to start on the Wednesday. It was cancelled, so we thought we were going on the Thursday, and on the Wednesday evening they cancelled the Thursday, so we were scheduled for the Friday. And those two days were hell, absolute hell not only for [daughter]: you are so upset and so worried and you'd get keyed up for this day, and it's awful enough anyway and then you're cancelled and cancelled again.*

The frustrations and difficulties of waiting were exacerbated in several cases in which there were retrials, usually following a hung jury. In one case, the initial trial was aborted because a member of the jury had overheard the defendants discussing the case outside the courtroom:

*So I then, I said to my boss. I was like, 'Yes, it's all done now. Everything's sweet.' And then before I knew it, a couple days later we got a phone call*

*saying, 'Just to let you know, it's all been written off. You're going to have to start again.' So I then had to, next day go back and speak to my boss, and say, 'Look, this has happened. Now I'm going to have to take more time off ...'*

**Ryan; victim-witness of serious assault**

Following a guilty verdict, some of our interviewees who had been eager to find out the sentence found that there were also frequent delays to the sentencing hearing:

*We're still waiting for sentencing. ... It's been postponed like three times... I don't think I know the details for all of the times it's been postponed, but I think the latest one was there was a report that was done in September, and the sentencing was meant to be done at the end of December, but when it came to that sentencing date it turned out that there was something wrong with the report. So they had to re-sort out this report so that the sentencing can be done for the end of January.*

**Anna; witness in sexual offences case**

## **Preparing for court: information and the pre-trial visit**

Witness Care Units distribute a leaflet to witnesses and a DVD outlining what to expect when attending court. The Witness Service also offers a pre-trial visit to a courtroom to explain processes and what will happen during the trial. Most of our witnesses were offered and made use of this visit; only two who said that they had wanted a pre-trial visit had been unable to arrange one – reportedly due to short notice and lack of staff to support the visit. However, most of those who did visit the court prior to the first day of trial, found it useful to find out what a courtroom looks like and where everyone is positioned during a trial:

*Yes, I think it helped me knowing where I was going – because it is daunting when you've never been to anything like that before.*

**Karen; witness in sexual offences case**

Grace was pleased to have had the chance to see barristers in a non-formal role:

*They took us round to two different sized courtrooms, and these young blokes came in, laughing and joking. And I said to her, 'Who's that?' because the Witness Service ladies were with us. They said, 'Oh, that's the barristers.' That made me feel better, because they looked like normal people.*

**Grace; witness in theft from workplace case**

Yet there was also a view that no amount of information or pre-trial visiting could prepare one for the experience of entering the courtroom on the day of trial:

*I don't think there's anything else they could have done. You were offered a visit, which is fine. You can go and see an empty room. You can look at the video. You can talk to people, which is fine. It's all there for you. But nothing can prepare you for walking into the court in front of everybody.*

**Maggie; witness in serious assault case**

## **Requesting special measures**

Special measures were introduced in order to help vulnerable and intimidated witnesses give evidence in court. These measures can be suggested by the police or Witness Care Unit or they can be requested by witnesses, but it is the judge who decides whether or not they will be granted. Recent research conducted by the Crown Prosecution Service (CPS) has found that the needs of victims and witnesses are not always considered at the charging stage. Further, even when needs are identified, the police, CPS and witnesses may not discuss the possibility of special measures in a timely fashion, with the result that many applications are made late.<sup>6</sup> This can mean a witness does not know until the very last minute if he or she will receive special measures – as many of our interviewees described:

<sup>6</sup> Charles, C (2012) Special Measures for Vulnerable and Intimidated Witnesses: Research exploring the decisions and actions taken by prosecutors in a sample of CPS case files. London: CPS





Posed by models

*It wasn't that easy to get [special measures]. I understand that's it's not really down to the police, but it was really unsure as to whether we'd get it and nobody really told us, definitively, until the actual day that we were in court that we'd be getting them [screens].*

**Donna; witness in serious assault case**

Some also complained of having been given the impression that they would receive special measures, only to find later that this had been denied by the court; or of receiving unclear or inconsistent information about what support they were entitled to:

*Leading up to it, we did find the police full of empty promises. For instance, they said they'd come and pick us up and they never did. They said, at one point, that screens weren't going to be there and we all said, we wouldn't do it unless they were. So there were just a few added stresses along the way that made it a bit more difficult.*

**Eva; witness in armed robbery case**

However, our interviewees also reported the use of pragmatic ways to help alleviate their concerns about attending court. For example, Elaine was denied special measures but was permitted to enter the court via the judges' entrance to avoid meeting the defendant (who had been accused of sexual offences against her daughter) in any of the public areas of the court:

*At the last minute, I'm thinking: oh my God, he smokes – he's going to be standing out on those steps ... oh my God, we've got to walk up these steps, he smokes. He'll be there. We've got to walk past him. So I telephoned – I think it was the Witness Service – and once again she was absolutely lovely and ... she was trying to understand what I wanted ... They said, 'Use the judges' entrance,' and they were fantastic.*

### 3. Attending court and giving evidence

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The large majority of our interviewees had never been in a court before, other than on their pre-trial visits. It was an unknown environment and, with a few exceptions, they were nervous about giving evidence and about coming face-to-face with the defendant. As described by Adam and Julia, their nerves were not helped by the formality of the courtroom and the prospect of having to speak in public:

*Nervous, yes, because obviously I'd never actually been in a court. So I didn't quite know what to expect and I don't like public speaking anyway. So having the jury staring at you, and the judge, and then I could see the defendant out of the corner of my eye. Didn't make eye contact with her but I knew that she was there. It just felt as if I was on trial.*

Adam; witness in theft from workplace case

*It just seems very scary when you go in because of the way the set-up is and everything. But it has to be that way, I know. But it's just very frightening, very daunting when you walk in and you see all the chairs and the benches and everything set out, and then you see all these people with their wigs on and the gowns. It's just very, very frightening.*

Julia; witness in sexual offences case

While our interviewees were anxious about having to face the defendant(s) in the controlled setting of the courtroom, most were unprepared for meeting defendants in the court entrance halls, canteen or smoking areas outside the court buildings. These encounters were distressing, and were regularly reported by our interviewees – such as Dan, the witness of a serious assault, who had not been informed by police that the defendant was out on bail and had been upset to see him in the entrance to the court:

*Second day, I think I got there for 9:30. And this is the bit why I wanted to [do this research interview], because this is the bit that I thought was terribly wrong. When we arrived in the foyer, [the other witness] and I again, and the accused walked straight in. Straight in, and passed us. And I just went: 'Hang on, he's supposed to be on remand.'*

Graham was a witness in a case involving sexual offences against his young daughter. The accused was Graham's brother. Graham encountered his brother and sister-in-law on his arrival at court and had to pass them to enter the court building:

*When we turned up in the car, they were outside having a fag outside the door and we were just so shocked to see them, completely shocked.*

#### Waiting in court to give evidence

Witnesses do not only have to wait for their case to come to court; the waiting continues once they are at the court. It is common to be asked to arrive at court in time for the start of business at 10am, but not to be called until mid or late afternoon, if at all. This may simply reflect the planned running order of the case, or may result from delays to proceedings. Delays are not always explained to waiting victims and witnesses, but may be caused by any number of factors: such as lawyers held up in other courts; other court business running late and preventing the start of the case at hand; missing paperwork, exhibits or other material required by the court; late arrival of prison transport bringing the defendant to court; the failure of other witnesses or a bailed defendant to turn up at court; or an absent court interpreter. Stella, a witness in a case involving possession of an offensive weapon, told us that when she got to court she was given very little information about when, or even if, she would be required to give her evidence:



*I wasn't kept as informed as I'd have liked to have been at that time. It was just sort of: 'Hang about and wait. You might get called; you might not.'*

Natasha had to attend court on three different occasions and was called to give evidence on two of those occasions:

*You're just sat waiting, aren't you? You know that you've got to do it and especially, I think, after you've done it once and it's not a pleasant experience anyway, then you kind of think: 'Oh my God, I've got to go again.' And then going and we sat for two days in court the second time just waiting to see if it would go ahead, if he would turn up and he didn't. And then a third time – it's pretty horrendous.*

During these waiting periods, the Witness Service waiting area was perceived as a 'safe haven': a place that was away from the busy public area of the courts, where witnesses could spend time with supportive family or friends. The Witness Service volunteers were commended for their efforts to reassure and keep witnesses updated about the progress of the case:

*[I was] nervous for sure but there was a nice lady who was talking to me – I can't remember her job title, but her job was to just talk to people like me – victims or witnesses – and just to comfort them and let them know the procedure and what's going to happen. Just to reassure victims not to be nervous because today is for the benefit of them. I sat in a waiting room for hours, nervous. I was hungry as well, because I didn't know I would be waiting for hours. The police officer got me food which was nice of him.*

**Faris; victim-witness of robbery**

*So there was lots of waiting, lots of not knowing what was going on. Lots of adjournments and the Witness Service people were brilliant at trying to make sure we were informed about what was going on; even though nobody really knew what was going on. It was very confusing.*

**Janice; witness in appeal against an ASBO**

## **The prosecution barrister**

Many of our interviewees misunderstood the role of the prosecution barrister: specifically, many did not fully understand that this barrister is prosecuting the case on behalf of the Crown rather than the victim. They commonly described this individual as 'our barrister' or 'our man' or 'the one who was acting for us', and were frustrated that they had little or no contact with him or her prior to giving evidence. For example, Eva complained of the prosecution barrister's lack of personal investment in her case; and, for Ron, this signified an unfair difference in how defendants and victims/witnesses are treated by the defence and prosecution lawyers respectively.

*You know how it works with barristers: they basically get given the case in the morning and it's not really a personal thing for them. It's sometimes quite nice to meet the barrister before. The first time [in court] we did; the second time we didn't.*

**Eva; witness in armed robbery case**

*You can imagine the defence barrister grilling and going over all the questions with the defendants, yes? But I would have understood it should have been the same with me – to get a case together. For me, it was just like the guy came in, shook my hand and said, 'Hello, you're the victim, blah blah.' Which for me, I wasn't happy with really. I didn't think it was good. And for me it's just like,*

*the guys are overpaid barristers getting big money; they don't really care about the victim, the impact on the victim. But they should remember it's not a game. They're playing with people's emotions and people's lives.*

**Ron; victim-witness of serious assault**

Some of the frustration about lack of communication with the prosecution barrister may have reflected a misunderstanding of the barrister's role as representative of the Crown. Nevertheless, there is a formal expectation (for example, as stipulated in the Prosecutors' Pledge with respect to victims) that the barrister should introduce him/herself to the prosecution witnesses and update them on the progress of the case. Those of our witnesses who did have good contact with the prosecution barrister evidently greatly valued this:

*The prosecution barrister did a good job. The fact that he spoke to me before gave me confidence; the fact that he said that he was sure that we were going to win the case gave me confidence.*

**Faris; victim-witness of robbery**

*He was very, very helpful and very informative. They went out of their way to ensure that we were kept informed as much as possible. Even though a lot of them are very busy and we weren't the only case being heard. So they were obviously quite busy.*

**Janice; witness in appeal against an ASBO**

## **Giving evidence**

In all kinds of contexts, we talk about having our 'day in court'. This implies that appearing in court is a welcome opportunity to tell your story; to recount your version of what has happened to you. However, in reality, the telling of a witness's 'story' in court is hindered by various legal constraints on what the jury is permitted to hear and to take into account in their deliberations. This can leave victims and witnesses feeling that the evidence they have provided in court is incomplete; that it lacks the necessary context to make it meaningful. For example, Grace, who was the manager of a sheltered housing complex, gave evidence about

an employee's theft of money from an elderly resident. She was frustrated that she was not allowed to refer to a similar theft which had taken place:

*I would have liked to have [referred to the other theft], because I felt that with two people having the same thing happening it was more evidence, obviously. So yes, I would have liked to have brought it up myself. Because I really knew she couldn't get off with this.*

Tracey, a witness of a serious assault, spoke of not being able to give a full account of the offence:

*Things sometimes are worded in such a way where there is only one answer you can give. But everything in life isn't just black and white. But you're not there to give an explanation: they're not interested. As soon as you start trying to give an explanation, the other guy stands up and says: 'Is this relevant, your lord' or 'your honour' or whatever it was. And that's quite frustrating. Because you think it's relevant.*

Freya complained about having to focus on the 'facts' of the sexual offences she suffered, and not having the opportunity to explain the crimes impact on her, when giving evidence:

*It's like fact and fiction. This happened on this date. But it doesn't show how it's affected me. It just seems very kind of bland; a bland outlook on what actually happened and how it's affected [me]. It like dehumanises me as a person, of what he's done, or the whole thing.*

Some of our witnesses also felt constrained in recounting 'their side' of events by the order in which evidence is given in court: the prosecution present their case first, which is followed by the defence case. This, it was said, naturally favours the defendant:

*They didn't allow for any elaboration... Then obviously when it came to the other side giving his evidence there was much more elaboration... It just kind of made us realise that, after hearing*



everything, that he'd say, 'We didn't say that and we didn't say that.'

**Amanda; witness in sexual offences case**

For some of our interviewees, another significant limiting factor in giving evidence was their poor recall of events after the considerable lapsed time between the crime taking place and the case making it to the court room:

*It is very formal and it requires you to remember in such a specific way that I think that that's very difficult for people. Especially a year on...They said something to me about, 'Did this happen on such-a-such a day or before or after something?' And really I hadn't the slightest idea by that time. Because it was a matter of hours probably we were talking about. And it all merges into one big drama really. Trying to recollect the minutiae of it. It's difficult.*

**Barbara; witness in theft case**

## **Cross-examination**

Cross-examination underpins the adversarial system. It is the defendant's right to have the evidence against him or her vigorously tested by the defence barrister. While some prosecution witnesses are able to rationalise this as the defence 'doing their job', being cross-examined can be a harrowing and undermining experience, with witnesses feeling it is they who are being treated like criminals and disbelieved:

*When anybody is in the witness box, there is no need to feel like they are – have done any offences. Yes, they have got the rights to ask the questions, but the way it was – we were feeling like we have done an offence. And because of that, we are ended up in this box... Because when the person is not aware or not been in the witness box at any time in their life, and on the first day when you go in the witness box... You feel nervous. And at the end of the day, the way they keep on asking you the same question repeatedly in different manner... So that 40 minutes, when I was in the witness box and when I left the court – oh my God. It was literally draining me out. And I was just thinking,*

*'Why should I have reported this?'*

**Masood; victim-witness of racially aggravated public order offence**

Nikki, the victim-witness of a sexual assault, described how she responded when being accused of lying about what had happened:

*He kept saying to me: 'It didn't really happen. You really wanted it to happen, didn't you?' Trying to discredit your character; they're trying to prove that his person is innocent and I'm the guilty person. And I kept going back, 'I did not ask him to do that. I did not invite him to my room. He assaulted me. He sexually assaulted me.'*

Tina observed, from the public gallery, the cross-examination of her daughter, who was the victim of a sexual assault. She spoke of her turmoil and her powerlessness to respond to the defence barrister's negative portrayal of her daughter:

*Oh, I felt like slapping him straight in the face, to be honest with you. That's his job. He's got to defend that bloke, and he deserves to be defended, I realise that. That's the way our system works. But you know, he tried to make my daughter sound like she was a drunken old slut... I tried not to react in any way at all. I just wanted to say something, but for fear of being held in contempt of court, I didn't say anything at all. I wanted to say to this bloke that he'd got it wrong. You know, it wasn't like that. But then I suppose everybody feels like that when they go to court. ... It seemed everything they said, it was all twisted... I was looking at the jury and thinking, 'Are they going to believe his turn on things?' In my opinion, he had a free ticket to stand there and slag my kid off. And I couldn't do nothing about it.*

The difficulties of being cross-examined are sometimes exacerbated by the legal jargon and complex language of the courtroom, which can limit understanding of what the lawyers are asking. And some of our interviewees complained of the barrister's manner in conducting the cross-examination:



*I noticed that every time he'd asked me a question he'd have the stance of putting his elbow on the table and looking at the time and so I felt it was as if to mock me – I didn't like him doing that. And he definitely kept the face of disbelief throughout the whole thing ... He looked miserable, a face of disbelief at what I'm saying. But it's funny because every time we were paused for a break that face would just go and he would laugh and talk to my barrister as if they were friends. I'm sure they probably were – they are just doing their jobs.*

Faris; victim-witness of robbery

## The judge

It is the judge who has the responsibility of striking the difficult balance between, on the one hand, preventing overly hostile or aggressive cross-examination of witnesses and, on the other hand, allowing the defence to challenge all aspects of the prosecution case. Our interviewees were mostly positive about their treatment by judges, and gave examples of how they felt that the judge had 'protected' them the worst vagaries of the cross-examination:

*[The judge] was more of a case of: 'You've asked it, move on. Leave it there.' Or she'll shoot him down in flames if he asked something inappropriate.*

Ian; witness in a sexual offences case

*I could feel my hackles going up because [the defence barrister] keeps saying, 'I put it to you that that is not what happened.' And, 'I put it to you that this is what happened.' And when you know that that is not what happened, how many times can you say that to him? I know they have to do their job but I think they go overboard a bit because he just obviously wasn't listening to what I was saying because he kept repeating himself. Even the judge did have a go at him in the end.*

Sarah; witness in serious assault case

Beyond cross-examination, the judge's role as a neutral arbiter was often valued:

*The judge was like the referee. When phones kept going off in the public gallery he told them to switch it off – otherwise they were going out. When the barristers were arguing with each other he split them up. When he didn't understand anything, he didn't understand a question that the barrister had asked me or didn't see the point in it he was quick to the mark and said, 'I don't actually think that is a relevant question.' To me he was very patient; when things did get a bit emotional he stopped everything. He was very understanding.*

Michelle; witness in sexual offences case

Witnesses also appreciated other small acts of consideration by the judge, who might gently ask if they needed a break or a drink of water if they were visibly upset, or if they would prefer to sit or stand in the witness box:

*Obviously beforehand I was really apprehensive and really nervous, but the judge was really nice and made me feel at ease. He spoke to me beforehand – not much, obviously – but just to say 'hi', and said to get up when you're giving evidence, ... and that there was water there and tissues. So, yes, that time I felt fine.*

Chloe; victim-witness of armed robbery

## Special measures when giving evidence

Nine of our interviewees received special measures in the form of being permitted to give evidence behind a screen or via video-link; and a further 12, who were not themselves recipients of special measures, appeared in cases where special measures were used for other prosecution witnesses. We have already noted that late confirmation of access to special measures when giving evidence sometimes caused stress and anxiety. There were also times when special measures did not work well. For example, from Karen and Graham's story (on page 26), we can see how the failure of recording equipment used to deliver special measures, and the judge then refusing to allow transcripts of the recording to be given to the jury, resulted in the need for a re-trial and additional distress for the witnesses involved.



PUBLIC GALLERY



However, most of our interviewees who were granted special measures – usually screens – greatly appreciated this provision:

*I couldn't emphasise enough how important the screen was, because I think the fact that if you didn't have the screen, it would make a hell of a difference to you. Because you're the victim and you'd be seeing the assailants and looking at them. I don't think you'd be able to focus yourself, or focus on giving evidence. Because anger or emotions might take over and you wouldn't be able to concentrate on giving evidence.*

**Ron; victim-witness of serious assault**

*I would have been a lot more nervous without [screens] and I definitely wouldn't like the thought that the defendants seeing me again. I'm sure he's forgotten what I look like; well, I hope the police didn't show him pictures of me. I never take the route of where the crime happened again, I always avoid it. Apparently they are not from my area but I'm always reluctant to go through that subway ever again, just in case they are there.*

**Faris; victim-witness of robbery**

## **Victim Personal Statements**

Victim Personal Statements were introduced in 2001 as a means of allowing victims to express how they have been impacted (physically, emotionally or in any other way) by the offence – information which, as we have seen, is typically excluded from the evidence put before the jury. All victims should be given the opportunity to make a Victim Personal Statement when making their witness statement – and should also be permitted to provide a statement at a later stage. While the content of a Victim Personal Statement cannot be cited as evidence in a trial, it may be read out or referred to by the judge in sentencing, and may help the judge to decide on the sentence by providing more information about the nature of the crime. Consistent with the findings of other research on this topic,<sup>7</sup> we found that not all our victim interviewees were aware of being offered the opportunity to make a Victim Personal Statement, or understood how the statement had been or could have been used.

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<sup>7</sup> See, for example: Commissioner for Victims and Witnesses in England and Wales (2011) *Victims' views of court and sentencing: Qualitative research with WAVES victims*.

## Karen and Graham's story

Karen and Graham, a couple in their early 40s who both work in the leisure industry, first had contact with the criminal justice system in highly traumatic circumstances, following their 16-year-old daughter's report that her uncle (Graham's brother) had sexually assaulted her. They described this crime and all that came with it as having had a huge impact on them as a family – 'it tore us apart' – and Graham told us that he no longer had any contact with his brother or his parents.

**Before court:** Karen and Graham's contact with the criminal justice system started out on a very positive note. They received an excellent response from the police when they first reported the crime. They felt that the police explained to them exactly what the case would involve, and they had a good relationship with the officer in charge who kept them informed about what was happening. They felt they would ideally have liked to have more contact with the officer, but understood that she was busy. They also had contact with the Witness Care Unit liaison officer who tried to have the court case scheduled in school holidays – although there was some confusion over dates, and they received a phone call and then a letter detailing different dates for trial. Karen, Graham and their daughter made use of their pre-trial visit and found that very useful.

**At court:** Once at court, they found giving evidence an extremely difficult and emotional experience: 'It was just like opening an open wound that just wouldn't heal... it's horrible going over it, knowing he's in the room.' Graham had requested screens as he did not want to see his brother in court, but was not told if screens would be allowed until the first day of the trial. Karen struggled with the cross-examination, partly because she had problems understanding some of the words used by the defence barrister. 'Now I can say he's the most horrible man I've ever met in my life... He was very, very strongly spoken, and he used a lot of words that you think: oh hang on. I had to ask him a couple of times, "Can you explain that?"...But he was very booming and very loud and I was intimidated anyway to be there in front

of all these people looking at me, and obviously I was upset.' Karen was also dismissed three times in the first ten minutes of giving evidence because of matters of law that had to be discussed between the barristers and the judge. Their daughter spent nearly two days giving evidence.

In the end, they endured three trials before a verdict was reached. The first ended in a hung jury – which they found devastating, feeling exhausted and let down by the process. They did not intend to agree to a re-trial but the police found further evidence. In the second trial the jury was dismissed by the judge because of the poor quality of the recording equipment relaying their daughter's evidence. Several jury members had reported difficulties hearing the recording and the judge refused permission to provide them with transcripts. At the third trial, the jury found the defendant guilty of two of the nine counts with which he had been charged. He received a community sentence and was put on the Sex Offenders' Register.

**Afterwards:** The trials were evidently a huge ordeal for Graham and Karen, as well as their daughter, and a cause of untold anxiety and stress. Graham had to leave his job as a result of the time he had taken off work. They were particularly unhappy with the fact that the second trial was stopped because of the poor quality of audio-visual equipment; and Graham noted that the cost of updating the equipment would be considerably less than the cost of holding re-trials. Karen and Graham were also concerned about how easy it was to bump into the defendant and his supporters in the court building.

Nevertheless, both agreed that they would be willing to act as witnesses again if they were called to do so, and observed that much of the stress associated with their case reflected the fact that it was so personal and linked to family. They complimented the police, court staff and the Witness Service.



“ It was just like opening an open wound that just wouldn't heal... it's horrible going over it, knowing he's in the room ”





## 4. Afterwards: overall perceptions

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After giving evidence, most witnesses did not stay in court for the verdict to be reached, and nor did they attend the sentencing hearing. They therefore depended on feedback (by letter and/or telephone calls) from the police and Witness Care Unit in order to learn about the case outcomes. Most were satisfied with the information they received, but there was a small minority who heard of the verdict through unofficial channels, including via Facebook and, in one case, as a result of an abusive phone-call from a friend of the defendant.

### Views on outcomes

As noted above, procedural justice theorists argue that, for people in contact with the criminal justice system, perceptions of fair processes tend to be more significant than perceptions of fair outcomes in determining trust in justice and belief in the legitimacy of the system. And indeed, as will be further discussed below, our study found issues relating to process to be extremely important for our interviewees. However, in the stark setting of the courtroom, there is no doubt that the outcome of a case – in terms of whether or not the individual is found guilty and, following a conviction, the type of sentence passed – is a crucial determinant of a victim or witness's overall view of the criminal justice system.

In the majority of our interviewees' cases, the defendants were found guilty on all or at least some of the counts with which they had been charged, or changed their pleas to guilty as the trial was about to start. For the most part, this produced a general feeling of satisfaction among the victims and witnesses, and made their often stressful and lengthy dealings with the criminal justice system feel worthwhile:

*I felt justified. He did the things. We went to court. I felt I won. They gave him a sentence – that's all I care about... I just felt justified: you've blackened my eyes, head butted me a few times. I felt justified you got payback for that. Because they feel that you're stupid and you're weak. I'm sure he wasn't thinking I was weak then when they gave him that sentence. Because who wants to be locked up at 50. ... Just so long as I just felt that I've won. It's not that I've lied or they haven't believed me. I felt really good when I came home.*

**Denise; victim-witness of serious assault (domestic violence)**

*Now I feel good. That 40 minutes [in the witness box] was painful. But at least the outcome is good and I am happy... [The best thing about the courts is] fair and honest. Fair and honest decision.*

**Masood; victim-witness of racially aggravated public order offence**

*I guess justice worked.*

**James; witness in robbery case**

In contrast, ten of our interviewees appeared in court for cases in which there was ultimately a not guilty verdict on all counts. For some of these ten, this verdict was devastating – as was particularly evident in the case of Elaine, who had given evidence against a close family member accused of sexually abusing Elaine's young daughter:

*To my way if thinking, the whole thing was a waste of time. On that first day, I should have said [to the accused]: get out my house and don't ever come back, because the whole process has been a year or 18 months of grief, upset. It has brought the whole family into it. It has wasted public money, police money and everything. With what outcome? It was an outcome that would've happened anyway: he's been banished from the family.*

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Others whose overall experience was entirely tainted by a not guilty verdict included Michelle, who was a witness in a rape case:

*I don't think it was fair... You go up there, you expose yourself, whatever happened, all the evidence you give, all the stress you go through, everything from the incident up until then... You have got these twelve people looking at you that don't know you from Adam and you just think: 'I can say anything I want, but you haven't listened.' That is how it feels. I know that is not the case – they have got to base it on facts – but I couldn't tell you why it went that way. I wish I could.*

## Views on process

The nature of the adversarial court process is such that the formal role of victims and witnesses in court is limited. The prosecution carries the burden of proof: this means that the onus is on the prosecution to prove guilt ('beyond reasonable doubt'), whereas the defendant is not required to prove innocence. Moreover, the prosecution represents the Crown rather than the victim. We have seen, above, that the lack of their own representation is a cause of some frustration among victims and witnesses; as are the legal constraints on what they can and cannot say in court, and the emotional strains of being vigorously cross-examined. Together, this may produce a sense of being marginalised or powerless within the court setting – a sense that can, moreover, be exacerbated by the often lengthy delays in the prosecution process which victims and witnesses must simply endure.

However, the evidence from our interviews is that a sense of marginalisation or powerlessness is not an inevitable aspect of the court experience for victims and witnesses; particularly where they feel

that they have been well treated by the range of criminal justice agencies with which they come into contact before and during court attendance. Conversely, poor treatment can reinforce the feeling of being marginalised, as was evident from some of our interviewees' accounts. Examples of perceived poor treatment included those cases where interviewees received misleading information about special measures, or were denied special measures; or where they were left to bump into the defendant in public areas of the court; or where they were not kept informed about the progress of the case or the reasons for delays. As we have seen, some interviewees complained about the manner and approach of the defence barrister's questioning during cross-examination; but for the most part they interpreted this as a facet of the lawyer's specific role in proceedings rather than any kind of improper performance of duties.

Some interviewees spoke of being treated with a lack of consideration and respect by professionals. For example, Eva (a witness of an armed robbery) complained of mistakes and carelessness on the part of the police, which she felt was related to a more general lack of victims' rights:

*The fact that ...there were errors in our statement... I just think it's so well-publicised that our justice system leans further towards defendants than it does victims. And I think it's really apparent and you can tell when you are a victim. That is the case. All I kept saying and thinking when we were going through it all was how stressful it was and how many errors the police made. And how the police said they'd pick us up and take us to court, then at the last minute they couldn't. I just think – God, what if I'd been a victim of something a lot worse, a lot more distressing? I just think I'd really struggle.*

Tom, a witness in a burglary case, was greatly angered by his treatment by the Witness Care Unit:

*About two or three months later a phone call from the coordinator of the Witness Care, saying again, just completely off the cuff, 'You may have to go back to court again.' I said, 'What you mean? They've admitted to it.' 'Oh no, one of the accused has changed his plea to not guilty again.' ...I was livid, actually. Livid at the fact that that could happen. And also livid at the way I was spoken to again by the Witness Care. I just didn't like him. He was very abrasive in his tone and his manner.*

However, most of our interviewees spoke in positive terms about their treatment within the criminal justice system – with aspects such as access to special measures (where properly provided), the provision of dedicated waiting areas for victims and witnesses, and opportunities for pre-trial visits playing a particularly important part.

It was also evident from our interviews that in the inherently stressful context of attending the Crown Court – and all the more where the case revolved around traumatic events – acts of consideration and kindness by individuals can have a disproportionately positive impact on a victim's or witness's overall evaluation of the court process. These include, for example, the acts of the police officer who fetches some food for the robbery victim waiting to be called to give evidence; the judge who takes a moment to reassure a nervous witness about to be cross-examined; and the prosecution barrister who makes time to explain what has just happened in the courtroom. Several of our interviewees stressed that court clerks and ushers had been particularly considerate:

*They were lovely, really. I think they could tell how nervous I was. [Laughter] They were lovely.*

**Samantha; witness in violent assault and criminal damage case**

*Very friendly, very friendly ... Put you at your ease – yes – I can't say they didn't because they did.*

**Tina; mother of sexual offences victim-witness**

It was clear that the sympathetic support offered by Witness Service staff and volunteers was particularly valued:

*They were amazing. Because when we went – I felt a lot more comfortable about it than I thought I would. [The Witness Service waiting area] was so active with chatter and different things going on. When we went up to go into the courtroom, two of them came up with me and they were just chatting the whole of the time. And then they called me in – you know, it was very, very much easier.*

**Grace; witness in theft from workplace case**

*I was a bit nervous because it was a new environment and I'd never been there before and I wasn't quite sure how the whole court thing operated. But there were these people there, volunteers, who were there to look after us and they calmed me down and explained everything for me, so I was all fine after that.*

**Anna; witness in sexual offences case**

*Well, they were amazing. I mean there was tea and milk in the fridge and we could help ourselves and fruit juices and things. And they made sure that we were looked after. They were sort of really relaxed people and so – no, I couldn't praise them too much.*

**Ernie; victim-witness of assault**

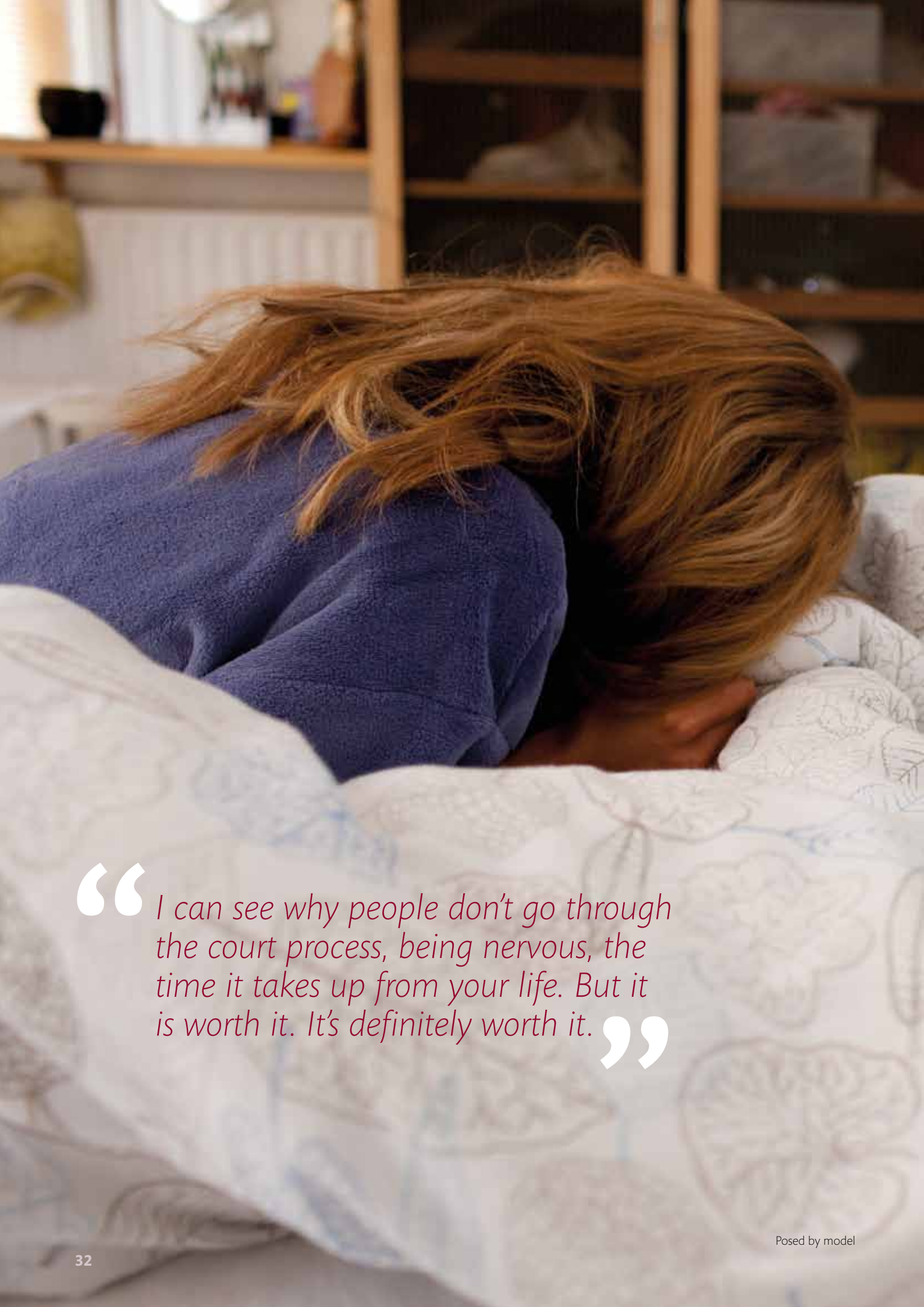
## **Giving evidence again**

Almost all of our interviewees stated that they would be willing to give evidence again in a criminal case; or, at least, in a case involving a relatively serious offence. Some, however, were very wary about the prospect of doing so; others asserted their confidence. Thus the replies to the question 'Would you give evidence again?' – a selection of which are provided in the box, (see page 31) – illustrate two things. First, we can see that individual experiences of court, and responses to those experiences, vary widely. Secondly, we can see that for most our interviewees, their experiences of the Crown Court left them broadly trusting of the court system and believing in its legitimacy.

## 'Would you give evidence again?'

- Oh yes, absolutely, without any hesitation, yes. I mean I didn't find it daunting at all. Once I'd got a feel for the proceedings I became reasonably relaxed.
- Yeah after going through it this one time I'd be a lot more confident in doing it. The experience helps a lot. I mean, once you go through it once it does give me confidence to do it again for a crime – God forbid, if a crime ever happened again.
- Well, basically, I will go to court again. I haven't been traumatised. I will if I have to go to court to give evidence, I hope not. But I would go again because it's not as bad as I thought. I was just thinking that I'll be in there shaking. Someone's going to be firing questions at you to try and trick you or catch you out. So I was thinking – God, I can't drink anything, can't do anything before I go in. But it wasn't anything like that.
- I feel strong about justice and I want things to be right. If you've done something you have to answer for it. So if I would witness something, some crime, I would go again of course. It doesn't matter if I wouldn't like it or it would be something more serious or less serious, whatever. It's just I believe that there must be justice done. So yes, I would go again.
- I'm ready to report [another crime]. But when it comes about the question [of being a] witness, before I will say yes I will ask them that can I see the barrister who is my barrister. From our side. I would like to talk to him. And then I'll go [to be a] witness. Not just blind straight-away in the witness box and you attack me. Not that.
- I would probably report [a crime], yes, because I suppose I'm a bit old-fashioned in that respect. I'm a very law-abiding person and I've brought all my family up to be the same. So I do believe ... I would report a crime again. But I probably wouldn't be so willing to stand as a witness.
- If it was the same thing again [burglary]...I wouldn't do it, no. I'd let the alarm go off and I'd see them going and I wouldn't bother. If it was a person, and somebody was hurt or it was a crime that was related to a person, I would definitely act again. But it would be with a bit of a heavy heart knowing how much hassle it was going to come to, that I would have to go through.
- Never. Never. ... It's not about telling the truth; it's not about being honest anymore or perhaps it never has been. ... I don't mean that I'd tell lies but I'd walk away. I think if I saw a child getting beaten up [I might get involved], but if I saw someone stealing a car or, I'd just walk away. I just don't think it's worth it.





*“ I can see why people don't go through the court process, being nervous, the time it takes up from your life. But it is worth it. It's definitely worth it. ”*

## Freya's story

Twenty-year-old Freya works as a care assistant. She had been the victim of a series of serious sexual assaults and violence committed by her ex-partner. She was encouraged to go to the police by her mother, and her case was dealt with by a specialist sex offences police team whom Freya described as 'fantastic'.

**Before court:** The case took a year to go to trial and was postponed on more than one occasion due to, amongst other matters, the defendant sacking his barrister. Freya found the delays difficult to deal with: 'I wanted to study and I was going to college and wanted to get a new job. And it was all put on hold because I kept having to take off time giving interviews to the police and waiting for the court and then them changing dates. And it was like my life was on hold basically.' Freya was referred to the Witness Service and took up the offer of a pre-trial visit: 'It's better to see a place before you actually go.... It was definitely a help going to see the courts because I kind of knew where everyone would be sitting, where I would be.'

**At court:** Freya described herself as 'a nervous wreck' on the day she was to give evidence and appreciated the support of the Witness Service: 'They were just really nice, really gentle, really soft, explained everything. They even offered tea and biscuits. And they gave us our own separate room. They made it the best possible experience it could have been – if you get what I mean? – in that situation.' She was granted special measures and gave her evidence from behind a screen which she said made her feel more secure.

Freya's main worry was the cross-examination as she describes herself as having a bad memory and gets very confused about dates and times. She got upset during her evidence, but overall she felt she coped: 'Obviously in court you can't just start talking and blathering on what you want – you have to answer the questions. But I did feel like I

was able to give my answers and say what I wanted to say.' Freya had been advised by the Witness Service to say if she didn't understand a question, and she made sure she did this. However, she disliked the manner of the defence barrister: 'I know he has to cross-examine me, but he was a bit smarmy, like making faces and stuff. And he didn't really need to do that. Like obviously he's defending him, but you don't need to pull faces when you ask me questions.' Otherwise, she felt she was treated politely and respectfully by all the professionals she encountered at court: 'Everyone was lovely and they were professional, very soft, very gentle, very calm.'

**Afterwards:** The trial lasted about two weeks and Freya was kept updated about progress by the police. The defendant was found guilty on over half of the counts and sentenced to three years' imprisonment. Freya described her reaction to the verdict as 'kind of still disappointed. But I'm glad that [on] the other charges he was found guilty because it wasn't completely like they don't believe you. So I do understand that there has to be a certain process and it has to be unanimous and a certain amount of evidence to be found guilty on a certain charge.' She had been asked to complete a Victim Personal Statement and felt this was important as it gave her the opportunity to say how the crimes had affected her, which was not permitted when she gave evidence.

Overall she described her experience of court as positive: 'It has made me a lot stronger, And I think things should be reported. I can see why people don't go through the court process, being nervous, the time it takes up from your life. But it is worth it. It's definitely worth it.'


## Conclusion

Victims and witnesses are crucial to our criminal justice system. It is their cooperation and engagement that make that system work. This research highlighted that witnesses often found coming to court and giving evidence daunting and stressful. There was much frustration about waiting times which caused anxiety as well as practical problems. Some spoke of their distress at meeting the defendant and their supporters at court, being aggressively cross-examined and having little information about the progress of the case. Many of the elements of support that have been put in place for victims and witnesses, where these work effectively, were greatly appreciated and helped with the process of giving evidence; especially the Witness Service, special measures

and opportunities for meeting the prosecution barrister before the trial. The research highlights how important it is that victims and witnesses are treated with consideration and respect by the range of professionals with whom they come into contact: including Witness Care Unit staff, the police, court staff, Witness Service staff and volunteers, barristers and the judge. Considerate and respectful treatment makes the difficulties and frustrations of coming to court more manageable, and helps to reduce any sense of marginalisation. However, there is clear scope for support to be enhanced; for witnesses to be better informed about the court process, and to be better able to make their voices heard.







**Victim Support** is the national charity giving free and confidential help to victims of crime, witnesses, their family, friends and anyone else affected across England and Wales. We also speak out as a national voice for victims and witnesses and campaign for change.

We have offices throughout England and Wales and we run the Witness Service in every criminal court.

**[www.victimsupport.org.uk](http://www.victimsupport.org.uk)**

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