Putting victims of crime 'at the heart' of criminal justice:

Practice, politics and philosophy

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Matthew Peter Hall

University of Sheffield

School of Law

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CHAPTER 6:
VICTIMS IN CRIMINAL TRIALS

This chapter will set out the main empirical results from the courtroom observation sessions and the surveys conducted during the course of this project, both in terms of statistical data and ethnographic observations. It will also draw on interviews conducted with lawyers, administrators and other criminal justice personnel to provide an insight into the occupational culture of legal professionals, practitioners and courts and – in combination with Chapters 4 and 5 – a solid framework for more detailed discussion and analysis of the three research questions in the next chapter.

The chapter will initially be organised in a chronological fashion, following the victim through the trial process. As such, we will begin by looking at the support and facilities available before the trial, before moving on to the trial itself (especially the evidence-giving process) and then the position of the victims after the trial.

6.1 – SUPPORTING VICTIMS AND WITNESSES AT COURT BEFORE TRIALS

I will begin this section with some ethnographic observations concerning the support and facilities offered to victims before proceedings had begun for the day at the three courts under review.

6.1.1 – The Witness Service

All three courts in this study had a permanent Witness Service run by Victim Support. The Clerk to the Justices at Court B informed me that funding for a Victim Support-run Service had been secured in 1995, and at the time this had been the topic of some local press attention. The Justices' Chief Executive of the old Magistrates' Court Committee pointed out that the area under review (where all three courts are situated) was amongst the first in the country to have a Witness Service at all four of its magistrates' courts. That said, one legal adviser at Court B remarked on how he could not recall ever being told about the introduction of the Witness Service at the time:

> "It was a bit unusual because all of a sudden people appeared with the witnesses, no one let us into what was about to happen. From my recollecting I can't recall us ever having a meeting and it being said 'there's now a witness liaison service

and you'll see them around the building'; people appeared, we asked questions and then we were told what was happening...the first time I saw someone with a witness I was a bit taken aback and wondered what was going on" (a legal adviser at Court B).

The Service at all three courts had its own office and prosecution witness waiting room. At Court B these were the same room, which the Witness Service co-ordinator found especially helpful in "keeping an eye on things". Indeed, when at one stage of the observation programme court managers proposed to relocate the office away from the waiting room to a location at the opposite side of the building, the coordinator avidly objected on the grounds that she would be unable to provide the same standards of support.

The waiting rooms themselves were small at both magistrates' courts and were not purpose built; with the main one (of two) at Court A lacking any natural light.[1] Both contained seating, a coffee table and magazines. At Court B the waiting room/office had its own fridge and tea/coffee making facilities, but no running water, which was taken by arrangement from the cafeteria just down the corridor (free of charge). The Witness Service volunteers at Court A were in a less favourable position in this regard. Having no tea making facilities of their own, their only option was to visit the cafeteria on the witnesses' behalf and buy tea/coffee for them (with the witnesses' own money) then carry the tea back to the waiting room some three floors above. Complaints about this situation were made by the Witness Service coordinator at a court users group meeting attended for this research, in which it transpired that at least one Witness Service volunteer had been scolded delivering hot drinks in this fashion. It is fairly ironic that a service often snubbed as merely offering "the tea and sympathy routine"[2] was in this case unable to provide such services themselves, the issue of course being one of (local) funding.

At Court B, Witness Service volunteers would usually be telephoned by security personnel to come down to reception to collect newly arrived victims and witnesses. At Court A, it was more usual for the security personnel themselves to take the witnesses directly to the Witness Service room. At Court C, the Witness Service manned their own reception desk, which would be pointed out by security staff.

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[1] Court A was a 1960s building and, consequently, incorporating the physical facilities needed to help victims and other witnesses was always difficult.

[2] As described by one defence solicitor working at Court B.

It is important to note that at all three of these courts (and probably at any court) the first contact a victim or witness had on arrival was with the court security officers as they proceeded through the metal detector. As such, these staff can have a very significant role in telling victims and witnesses where to go and giving initial information (see Table 2 below) and their attitude will also begin shaping the victim's view of the court, and perhaps the wider criminal justice system.

Court C, the Crown Court centre, had multiple purpose-built witness waiting rooms made out to resemble living rooms, similar to the special suites used by police officers to interview rape victims and conduct pre-recorded examinations in chief. These rooms contained sofas, televisions, board games, toys and video players for which child witnesses were encouraged to bring along videos to watch. The rooms also had desks, power and internet points to allow witnesses or their family members and supporters to work on laptops; a facility one witness told me had been extremely useful to her, having been obliged to wait in such rooms for long hours on several different occasions when the trial had previously failed to proceed.

An interesting aspect of this arrangement at Court C was that both the witness waiting rooms and the Witness Service coordinator's office were situated in their own area of the court building – with their own toilets – away from the main concourse. This differed from both Courts A and B, where one simply went through a door on the main concourse and witnesses were forced to leave this 'safe area' to visit a lavatory shared with all other court users. As such, at Court C prosecution witnesses had effectively been given their own private area behind the scenes; previously the exclusive preserve of barristers, judges and court staff. Nevertheless, as the Witness Service coordinator at Court C explained, this could prove to be a double-edged sword in that witnesses sometimes complained that they felt confined to these rooms, and hence somewhat on trial themselves. Another interesting aspect of the system at Court C was that witnesses could be met at a back entrance by Witness Service volunteers and led into court that way. Such a facility was not available at the magistrates' courts and, once again, resembles the way court professionals have long been treated.

Figures published by Victim Support and what was then the Local Magistrates' Court Committee reveal that the Witness Service at all three courts was coming into contact and offering support to a high percentage of victims and prosecution witnesses

(Magistrates' Court Committee, 2004). In the present research, observations recorded outside the various courtrooms did seem to suggest that the majority of prosecution witnesses at all three courts were being directed to the Witness Service rooms. In the first and second witness surveys distributed for this project at Court B, 36 out of the 41 prosecution witnesses, victims and prosecution supporters who took part (88%) had had some contact with the Witness Service, mainly on the morning of the trial.

As seems to be the case nationally, all three Witness Services were almost exclusively concerned with supporting prosecution witnesses. None of the courts had separate waiting areas or facilities for defence witnesses and no observations were recorded of support being offered by the Witness Service to defence witnesses, although the Service co-ordinator at Court B told me that such support would be provided if it were asked for. In practice, however, defence witnesses were still very much reliant on defence lawyers to pass on information. One legal adviser at Court B told me that in her view the Witness Service volunteers would be 'horrified' if asked to provide support for defence witnesses. Another lawyer, who had been running trials as a solicitor advocate for some 20 years, had only recently discovered that the Witness Service at a magistrates' court not being studied in this thesis would in fact assist defence witnesses when asked:

> "They also can do defence witnesses as well, but that's not advertised tremendously and I found that out by accident one day" (a solicitor advocate appearing at Courts A and B).

One legal adviser explained this concentration on prosecution witnesses in terms of their increased vulnerability to intimidation and need for support. Essentially, the argument was that defence witnesses often know the defendant, which is why they come to give evidence. Hence, there is less chance of them being intimidated. It also means that defence witnesses want to come to court to give evidence, meaning they don't need such personalised support. Of course we can dispute this argument on several grounds, the most notable of which is that defence witnesses will still need information and facilities even if they are indeed happier to give evidence than the average prosecution witness and are less subject to intimidation.

Indeed, the sometimes farcical implications of concentrating almost exclusively on prosecution witnesses were brought into stark focus by one anecdote relayed by a solicitor appearing at Court B:

> "The prosecution had called a lady who lived on the street...the police tendered her and I decided to call her. When she wasn't going to be a prosecution witness anymore they kicked her out of the [witness waiting] room and made her sit outside! She had to go and sit in the bloody canteen!" (a defence solicitor appearing at Court B).

On a similar note, several first-hand observations were made during the course of this research of Witness Service volunteers at Court A and Court B approaching unknown witnesses, discovering they were defence witnesses and then making a hasty retreat.

Based on observations outside the courtrooms and talking to Witness Service volunteers, the support offered to witnesses by the Witness Services at all three courts appeared first and foremost to involve "settling the witness down" (interview with Witness Service coordinator at Court C) in the witness waiting room, then offering them a tour of the courtroom. Court familiarization visits were carried out at all three courts prior to the commencement of the day's business, with the Witness Service at Court B seeming especially consistent in offering such a visit. At Court B, 36 out of the 41 prosecution witnesses, victims and prosecution supporters who took part in the first and second wave of my courts users survey (88%) had a court familiarisation visit, usually that same morning[3], but occasionally several days or weeks beforehand. The coordinator at Court B noted that they had never had a witness coming for such a visit in advance of the trial date who did not subsequently return on the day to give evidence.[4]

All three court Witness Services had their own keys to the courtrooms, and would endeavour to show witnesses around before lawyers, ushers or legal advisers and clerks had arrived. Nevertheless, it was common for such visits to be delayed, such that prosecution and defence lawyers (and myself) were already in place and setting up in the court. This would often provide a good opportunity for volunteers to introduce witnesses to the prosecutor – if he/she had not already been to see them – and to explain who the defence advocate was and what I was doing. From a research point of view, these situations were useful because they allowed me to observe the information passed on to witnesses during these visits.

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[3] The same number who had any contact with the Witness Service.

[4] Obviously we could argue that the witnesses who are prepared to come to court before the day of the trial for a familiarisation visit are also the ones likely to turn up on the day.

Even when I was not actually in the courtroom, I gathered from observing witnesses being led in and out of the courts that pre-trial familiarisation sessions usually lasted around ten minutes; although sometimes less if the room was already full of lawyers. From direct observations, their content was broadly similar at all three courts, although in the magistrates' courts volunteers would often open with a remark similar to "it's not like on TV". Witnesses would usually have the different parts of the court pointed out and named for them (bench, witness box, dock, public gallery) with particular emphasis on where witnesses would be giving evidence. In the magistrates' court, witnesses would usually be told that they could ask to sit down once their evidence had begun. On the occasions I was present for these sessions, the usher would almost always be there (having unlocked the court) and would sometimes assist the volunteer in naming things and also take the opportunity to ask whether adult witness wanted to swear on a holy book (and if so, which one) or affirm to tell the truth. In addition, volunteers would usually tell witnesses the order in which they would be asked questions from prosecution, defence and the bench.

In addition to this basic information, some volunteers would go further to offer advice on the evidence-giving process. This would often involve 'preparing' the witness for difficult or stressful questions with anecdotes like "you can only tell them what you know so just say if you don't know the answer to a question". On a few occasions, lawyers setting up in the courtroom expressed unease over the manner in which Witness Service volunteers were offering such advice, especially when their brief 'layman's' translation of the adversarial system did not quite meet with the strict black-letter reality. Such concerns were also reflected in interviews with lawyers, especially defence solicitors:

> "I sometimes wonder whether they go outside the bounds of what we would deem to be acceptable in their efforts to reassure and to make it easier for the witness. Sometimes one sees...comments made which one wouldn't be particularly happy about" (a defence solicitor appearing at Courts A and B).

One barrister had on occasion felt it necessary to confront Witness Service volunteers on this point:

> "I've had a lot of run-ins shall we say – without raised voices or anything such as that – I've had a lot of run-ins, in that I've stood in complete amazement of things that have been said in my presence" (a barrister appearing at Courts A, B and C).

Volunteers would typically end the pre-trial visit by answering any questions from the witness and their families. By far the most common question at this point was "where's *he* going to be?" referring to the defendant.

It was not always a straightforward business keeping victims and other (prosecution) witnesses apart from defendants and their witnesses on the morning of trial. On several occasions – having initially stowed a prosecution witness 'safely' in the witness waiting room – volunteers would subsequently lead such witnesses past defendants on their way to view the court. Indeed, on one such occasion at Court B where the relevant prosecution witness had complained of feeling intimidated, this prompted some degree of scandal amongst court staff.[5] The general feeling when talking to many prosecution lawyers, court staff, and Witness Service volunteers was that time spent out of the witness waiting room was – for a prosecution witness – 'vulnerable' time to be restricted at all costs. Indeed, there was a degree of truth to this, as demonstrated by one solicitor advocate:

> "We had a problem this morning of a case where there's obviously a lot of animosity between both sides – for whatever reason – and the witness support people brought them into the court where I was. We had five prosecution witnesses from the same family coming into court, and what does the defence lawyer do but bring the defendant in with his witness?! And they're all looking at each other, that's not very good for people about to give evidence" (a solicitor advocate appearing at Courts A and B).

Following the court familiarisation visit the Witness Service's main task was to occasionally send a volunteer into the courtroom to get updates on the situation regarding the running (or non-running) of the trial. Usually this information would be provided by the legal adviser in the magistrates' court, but sometimes the lawyers, especially the prosecutor, would update the volunteer. At the magistrates' courts this system worked fairly effectively in the majority of cases, however in the Crown Court matters were problematised by the fact that barristers tended not to spend as much time waiting in the courtroom itself before a trial. This often left just the clerk, who was not always kept entirely up to date with developments in discussions outside the court to the same extent as a legal adviser at the magistrates' court. Hence, the clerk was not always able to pass on exactly what was happening when volunteers came asking and –

[5] Which is interesting for what it indicates about the shift cultural practices and priorities amongst court workers.

indeed – volunteers seemed less comfortable approaching Crown Court clerks directly compared to their equivalents in the magistrates' courts:

> "I've not come across many occasions when the Witness Service has approached the clerk, but I do know of it having happened occasionally" (a court clerk at Court C).

This may be because at the Crown Court centre the Witness Service appeared to rely much more on CPS caseworkers to relay information back and forth, which we will return to below. In this case, the interviewee noted that when volunteers did approach the clerk, it was usually to report on the situation of particularly vulnerable or intimidated witnesses.

In addition, there was not much evidence at the Crown Court of court clerks being proactive in ensuring information was passed on to witnesses, whereas in the magistrates' court it was more common for legal advisers to ask prosecutors especially whether witnesses had been given information. That said, interviews with Crown Court clerks confirmed that they do indeed keep witness waiting times in mind – along with the need to keep witness informed – especially in the case of vulnerable and intimidated witnesses:

> "We're the lines of communication to ensure that the usher in charge of the witness area where that witness is waiting is aware of what's going off, so that they can let the witness know. The CPS clerk in court will be aware of the situation...and the overall responsibility for the [prosecution] witnesses lies with them" (a court clerk at Court C).

This is, however, a telling quotation, given that it excludes the role of the Witness Service entirely whilst also perhaps implying that CPS caseworkers are the ones truly responsible for witnesses in the Crown Court.

That said, even in the magistrates' courts, there was little consistency between individual legal advisers; some of whom went as far as to periodically telephone the Witness Service room with updated information while others did relatively little. Generally, however, the flow of communication between Witness Service and courtroom staff seemed far smoother at Court B compared with Courts A or C.

The success of individual Witness Service volunteers in acquiring information for witnesses at all three courts often seemed determined by how 'pushy' the volunteer

could be, especially in relation to prosecutors. As such, before or during trials a minority of lawyers still expressed frustration at being 'badgered' by the volunteers. As one legal adviser told me:

> "I think the Witness Service has probably got a bad reputation, a reputation for being busybodies" (a legal adviser at Court B).

Certainly this view was occasionally made obvious in court, with one defence solicitor during pre-trial proceedings referring to Witness Service volunteers as:

> "Parasites...bothering those of us with a proper job!" (a solicitor appearing at Court A).

Nevertheless, when court staff and legal practitioners at all three courts were asked whether they thought the Witness Service (once a strange and rather ostracised member of the court's social world) had been 'accepted' as a normal and everyday part of the court's business, most inevitably said this was true. In interviews and less structured conversation most lawyers and court staff agreed that the Witness Service did fine work and had become an integral part of the court process. Indeed, many interviewees were keen to emphasise the positive aspects of the Service:

> "They do a good job...there's someone there on hand to help who's not a solicitor or an advocate; doesn't work for the court, doesn't work for the Crown. It's not as pressurised, it's less formal. I think people are scared of people in suits....I think that's scary if you don't come to court every day. So yeah, they do a good job and they do their best" (a legal adviser at Court A).

> "They [witnesses] would relate better to members of the Witness Service than they would to me or many of my colleagues, however friendly we are...it does form a link in many ways between the lay person and the court system" (a barrister appearing at Courts A, B and C).

> "The witness support people do a brilliant job" (a solicitor advocate appearing at Courts A and B).

> "As a prosecutor you very rarely have time to see everybody [witnesses] to the full degree you would wish, especially when they turn up late...I can't see that the Crown could operate efficiently without it [the Witness Service]" (a solicitor advocate appearing at Courts A and B).

This last extract is particularity interesting, as it suggests a degree of unity between the Witness Service and the prosecution and implies the Service is now an integral, and

even vital, part of the system. In addition, it is clear that the presence of the Witness Service concentrated the minds of magistrates' court legal advisers on witness issues:

> "I wouldn't say the witnesses are at the forefront of my mind but I would say that...although I don't consciously take it into account I think that probably subconsciously you're aware people are waiting, and that's helped now by the Witness Service, who might put their head round the door saying 'what's happening?'" (a legal adviser at Court B).

As we have already seen, however, elements of dissent did persist in the minds of several respondents. In particular, the view was expressed several times during interviews that the Witness Service might be giving witnesses a 'biased' view of the trial process:

> "I am occasionally concerned – when I'm in court and they're showing people around – at the sort of things they say to the witnesses; such as about defence lawyers, 'they're gonna' pick on you, they're gonna' do this, they're gonna do that' – not giving an unbiased view of the court process...talking as if the defendant is clearly guilty" (a legal adviser at Court B).

One barrister thought the Witness Service generally played a very important role, but was concerned by what he perceived to be a lack of consistency between Services at different courts:

> "I'm very much in two minds about the Witness Service...my experience of the Witness Service is there is a significant lack of consistency throughout...the Witness Service in one court system are far better than the Witness Service in another, far more helpful...one specific court has a Witness Service who are absolutely fantastic...this is a Witness Service who will phone around to trace missing witnesses, who have always phoned the day before or a few days before to just double check that they are still coming...who are thoroughly pleasant and helpful and give tours of the courtroom. Now they all try and do that, my experience is that they don't all achieve it" (a barrister appearing at Courts A, B and C).

Consequently this particular respondent felt that the Witness Service were "yet to find their space" in the court's working community. We may note in this quotation that the barrister seems to focus on the role of the Witness Service in helping get witnesses to court, as opposed to its other support roles. This has in fact been a developing role for the Witness Service at all three courts in recent years, especially following the introduction of case progression officers to help ensure any witness problems (and other problems with a case) were flagged up and resolved well in advance of a trial

(Home Office, 2004d).[6] Certainly at Court C, the CPO would hold a meeting with the Service, the CPS, and the police trial unit to discuss the readiness of upcoming cases. In addition, it is also worth noting the view of the coordinator of the joint Police/CPS Witness Care Unit (set up under the *No Witness No Justice* scheme) that it would be useful to have paid Witness Service representatives working within the WCU, an idea frustrated by lack of central funding.[7] The implications of such new roles for the Witness Service may be that it is becoming an instrument of promoting system efficiency, as discussed in the last chapter.

Returning to the above quotation, the same barrister raised the point that there is quite a fundamental difference between what lawyers see as the 'inconsistent' way Witness Service volunteers carry out their work (provide information and so on) on the one hand, and the very formal, standardised way lawyers conduct themselves on the other:

> "You decide very early on what your 'pep-talk' is" (a barrister appearing at Courts A, B and C).[8]

As a whole, Court B seemed far more developed in regards to the incorporation of the Witness Service within the court's working community, with more interaction (both professional and social) between Witness Service and court staff. This was no doubt assisted to some degree by the fact that the Witness Service office/waiting room was situated right next to the two main trial courts, thus ensuring court staff, coordinator, volunteers and lawyers all came into contact with each other far more often than at either Court A or C. Hence, a developed 'court' culture was precipitated partly by practical issues.

6.1.2 – Prosecutors and victims

Probably the clearest contrast in witness treatment between the two magistrates' courts and the Crown Court was in the degree of direct contact victims and witnesses had with prosecutors. Broadly speaking, the vast majority of prosecutors at the magistrates' court would go and meet victims and other prosecution witnesses fairly early on before the

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[6] See Chapter 4, n.46 and below.

[7] On which see Chapter 4.

[8] Indeed, we will see below that lawyers do indeed appear to use standardised methods to elicit evidence.

trial began (or cracked or became ineffective). The CPS confirmed that this was indeed their policy:

> "At the magistrates' court, our solicitors and our lawyers and agents – I would hope – would always try to introduce themselves to the victims and witnesses" (the Chief Crown Prosecutor).

Interviews with practitioners confirmed that many Crown Court barristers, and prosecutors in the magistrates' court, now saw this an integral part of their job:

> "My role as an advocate for the Crown is to at least attempt to put them [witnesses] at their ease. I don't know anybody who has turned up to court who isn't nervous to a degree...I seek to reassure them, the process of giving evidence is often explained by witness liaison, but I will usually take the opportunity to explain the process myself. And I do so because it engages them in some kind of dialogue with me, such that by the time they get into court proper they've at least got someone they recognise, someone whose voice they understand, they can then appreciate my pace, delivery style – whatever else there is – they've got something they can latch on to" (a solicitor advocate appearing at Courts A and B).

> "You talk to them because it must be very nervous for any witness to go and sit in the court...You've got to make sure that that witness is comfortable and feels comfortable" (a solicitor advocate appearing at Courts A and B).

Hence, most prosecutors in the magistrates' courts would introduce themselves, give such reassurance and as much explanation as they felt they could, as well as a copy of the witnesses' statement for them to look over. Indeed – on this last point – seeing copies of their statements before giving evidence seemed an important concern for many witnesses, such that when prosecutors had been delayed in the courtroom before going to see them, a Witness Service volunteer would often appear fairly promptly to ask the prosecutor for the statements.

As already noted, barristers in the Crown Court relied to a far greater extent on CPS caseworkers to pass information to and from witnesses (perhaps via the Witness Service). It was nonetheless clear that this was a limitation of current occupational cultures amongst barristers specifically rather than a direction of policy by either the Bar Council or the CPS:

> "I know for a fact that [barristers in the Crown Court are] encouraged to have rather more contact with witnesses than they normally do" (a barrister appearing at Courts A, B and C).

This was confirmed by the Crown Prosecution Service itself:

> "We require barristers to go and introduce themselves to victims and witnesses and the professional standards document reflects that that is what they should do – because previously that would have been out of order – but now they're required to do it and we do require them to do it" (the Chief Crown Prosecutor).

Despite this, a number of advocates remarked on the fact that it was sometimes practically difficult to 'fit in' a discussion with victims and witnesses, especially when they could be dealing with a number of cases all at once at the magistrates' courts, and when problems occurred:

> "It's only when things go out of order that things get missed...you can sometimes be thrown off course" (a solicitor advocate appearing at Courts A and B).

The CPS again confirmed this practical reality:

> "There could be odd occasions if they've multi-listed that they [prosecutors] could be a bit stuck, hopefully just between cases they will get the chance [to speak to witnesses]" (the Chief Crown Prosecutor).

Nevertheless, it was clear that 'building a rapport' with witnesses before the trial began was definitely considered an advantage by some advocates:

> "You've got to get them into the courtroom in the first place...often a few minutes just there, just let it be known that you're the prosecutor, that you're there, that you're looking after them, that can be enough...I had one [trial] a couple of weeks ago, and it was a six year old and a nine year old [witness] and had I not gone in and introduced myself I really think I would have struggled with their evidence. But I went in, I introduced myself, left them to it – they drew me a picture – they were happy as Larry, and they gave good evidence in the end...and I think the five/ten minutes beforehand really made the difference. I wouldn't have been able to start from a position in the courtroom had I not gone and done that" (a barrister appearing at Courts A, B and C).

Further contact between prosecutors and victims or other witnesses before the trial – even at the magistrates' court – would usually only take place if there were problems, especially in the case of other civilian witnesses who were missing and when there were delays, which we will come to below. Nevertheless, prosecutors in general seemed far more willing to converse with their witnesses in the magistrates' court than suggested by previous writings in this area, thus indicating a partial change in occupational cultures. As such, it was clear from observations of prosecution witnesses giving evidence in the magistrates' court that the vast majority had met the prosecutor before,

and the same is true for defence witnesses in relation to the defence advocate. Nevertheless, it was also clear that there were definite culturally-imposed limits placed on these exchanges, and many prosecutors felt obliged to ask the defence lawyer for permission before straying too far beyond the standard greeting and explanations with witnesses. In the words of one younger barrister, who admitted that he himself would prefer that witness care was not part of his job:

> "I'm still not entirely sure of what [witness care] means because you've got to be careful – you've got to maintain a level of – well – I don't believe that you should be too 'pally' with the witnesses, I don't believe that they should be encouraged to refer to you as being on 'their side'" (a barrister appearing at Courts A, B and C).

In the Crown Court there was more evidence of the traditional barriers between prosecution witnesses and barristers working on behalf of the Crown. Whilst barristers were going to meet with witnesses, they would usually do so quite late on, perhaps just before a trial was about to start (or not). Unlike at the magistrates' court, it was also clear from watching prosecution witnesses giving evidence that some of them had not met the prosecution barrister directly before coming into court.

The 'barriers' between prosecution barristers and victims or other prosecution witnesses at Court C can be partly explained by the fact that at the Crown Court barristers have their own area of the court to retire to, whereas at the magistrates' court lawyers must usually wait around in the courtroom. When questioned on this issue, one barrister returned to the issue of 'building a rapport', and maintained that highly experienced Crown Court counsels simply didn't need to speak to witnesses beforehand in order to build up that rapport, but could do so very quickly during the evidential process itself. This seems to betray the view that witness contact before a trial is intended to assist counsel.

As alluded to previously, an important element of Crown Court witness care was the activities of CPS liaison officers assigned to each case. These actors have received almost no attention in the literature but play a vital role at the Crown Court as the prosecuting barrister's link with the CPS. In these observation sessions, it was also clear that the liaisons were taking on key witness contact duties; often the ones going back and forth keeping witnesses informed (either directly or through a Witness Service volunteer) and relaying information about witness availability and circumstances back to the prosecuting barrister.

This seems a highly significant development, because CPS lawyers were apparently now seeing it as part of their role at the Crown Court to provide this kind of services to victims and witnesses. Possibly, the rise in importance of the caseworker has mirrored an apparent decline in the role of police officers, who previously were often on hand at court to perform these kinds of roles (Shapland et al., 1985). This change may in part reflect the new facilities available to such 'professional' witnesses (not afforded to most civilians) to call them into court when they are needed rather than having them await around in the building, we will return to this issue below.

On subsequently speaking with Crown Prosecutors and representatives of the Crown Prosecution Service, however, it transpired that CPS caseworkers at the Crown Court have 'always' carried out such roles to some degree:

> "We've always had caseworkers in the Crown Court who've met victims and greeted them...they would have always kept them just informed of what was going on, but that is more extensive now, it is part of the caseworker's job to ensure that victims and witnesses are 'OK' and they know what's happening. Obviously they are assisted by the Witness Service people" (the Chief Crown Prosecutor).

Hence, this was considered more an extension of existing practice rather than a particular shift in focus or culture. Briefly returning to the Witness Service for a moment, it is interesting in this quotation how the Service is phrased very much as ancillary to the caseworker's role. Of course, leaving victim and witness care in the Crown Court to a CPS caseworker might have negative connotations. In particular, this implies there is yet a further barrier between victim and prosecutor, especially when liaisons themselves work through Witness Service volunteers.

6.1.3 – Facilities and information at court

Before moving on to discuss witness waiting times, delays and ineffective or cracked proceedings specifically, it is important to discuss more general facilities available to victims and witnesses at the courts under review. All three courts had a clearly marked reception desk and – as noted already – at Court C the Witness Service manned their own reception. All three courts also had their own cafeteria serving hot and cold food and drinks. The cafeterias at Courts A and B were relatively inexpensive, but their equivalent at Court C had a reputation for being rather costly. The three courts also had some very clear signposting, case listings on boards near the entrance and a public

announcement system in place to call witnesses and lawyers to court. There were also numerous informative booklets and leaflets on hand at all three courts. Court C had abundant – very comfortable – seating and Court A also had high quality seating outside most courts.[9] Court B struggled to some extent in this regard, having only limited plastic seating outside the courtrooms and in the cafeteria.

As noted already, all three courts had an established Witness Service with prosecution witness waiting rooms. Defence witnesses and defendants inevitably had to wait outside these rooms, usually near the entrance to the courtroom. At Court B, witnesses would often wait in the cafeteria, which was very close to the two main trial courts and often served as an 'unofficial' waiting room for defence witnesses, solicitors, and police officers.

Data regarding victims' and witnesses' views on the facilities at court were gathered through the various waves of the small court users survey carried out for this research at Court B. As noted in Chapter 2, the response rate for this survey was not high and, as such, the results should be considered indicative only. The methodological limitations of the survey have already been discussed. In addition, it was interesting to note the view of one interviewee when talking about problems eliciting responses to the new WAVES survey, to the effect that the region under review is known for attracting low response rates to surveys:

> "They surveyed 800 in [this area] but they only got a 10% return, so it's only based on 80 people. [This area] is renowned for being very awkward...we've tried every way of doing it...it might be just a local thing" (a witness care unit manger).

The above notwithstanding, data derived from the first and second surveys indicate that (prosecution) witnesses were generally satisfied with the Witness Service. On Table 2 we can see that all respondents who answered or partially answered the relevant questions[10] thought the Service was a good or satisfactory source of information, and

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[9] The exception being the rather old fashioned wooden benches outside the Youth Courts, although here posters of recent films adorned the walls.

[10] In total 80 respondents answered some questions on survey 1 and 2, but the vast majority did not answer all relevant questions. The sporadic nature of the responses also meant it was impossible to calculate a meaningful response rate. As such, the percentages here relate to all respondents who answered the relevant questions, or parts of them.

21% indicated it was the most useful source or information.[11] Security staff and court ushers were also rated 'good' sources of information by over half of these respondents. Conversely, the table suggests respondents did not generally make much use of leaflets (picked up on the day or received beforehand), the court PA system or the case listings displayed at court:

[11] Of the 12 respondents who did not use the Service, five were defence witnesses, one was a defendant and five were not directly involved in the proceedings (even as supporters of witnesses). Only one was a prosecution witness.

Table 2: Court users' rating of different sources of information at Court B*

	Rating							
	0	1	2	3	4	5		
	No answer	Good	Satisfactory	Unsatisfactory	Poor	Didn't use	Most useful	Least useful
Reception	1 (2%)	32 (56%)	15 (26%)	0 (0%)	0 (0%)	9 (16%)	3 (5%)	1 (2%)
Witness Service	7 (12%)	32 (56%)	6 (11%)	0 (0%)	0 (0%)	12 (21%)	12 (21%)	0 (0%)
Signs	7 (12%)	24 (42%)	23 (40%)	0 (0%)	0 (0%)	3 (5%)	1 (2%)	0 (0%)
Courtroom plans	9 (16%)	23 (40%)	14 (25%)	1 (2%)	0 (0%)	10 (18%)	0 (0%)	3 (5%)
Security staff	3 (5%)	30 (53%)	20 (35%)	1 (2%)	0 (0%)	3 (5%)	0 (0%)	0 (0%)
Leaflets from court on day	10 (18%)	6 (11%)	8 (14%)	0 (0%)	2 (4%)	31 (54%)	0 (0%)	3 (5%)
Leaflets received before day	11 (19%)	12 (21%)	11 (19%)	1 (2%)	2 (4%)	20 (35%)	0 (0%)	0 (0%)
Public announcement system	12 (21%)	8 (14%)	15 (26%)	0 (0%)	0 (0%)	22 (39%)	0 (0%)	3 (5%)
Case listings	6 (11%)	25 (44%)	15 (26%)	0 (0%)	0 (0%)	11 (19%)	1 (2%)	1 (2%)
Usher	11 (19%)	29 (51%)	12 (21%)	0 (0%)	0 (0%)	5 (9%)	3 (5%)	0 (0%)
No answer to most or least useful question							37 (64%)	46 (80%)

***Percentages are of those respondents answering any part of these questions (n=57).**

On the topic of information leaflets, respondents were asked if they had received the *Witness in Court* booklet (Home Office, 2003h). In total, 46 respondents who said they had attended to give evidence (for prosecution or defence) answered this question. Out of these, 19 (41%) said they had received the book before coming to court, 20 (43%) said they had not received the book, 6 (13%) said they could not remember either way and 1 (2%) said he had received the book but had not had the chance to read it before coming to court. Out of those who had certainly received the book, one was a defendant, two were defence witness, six were victims of crime and the other 11 were all prosecution witnesses.[12] Out of those who said they did not receive the book, four were defendants, nine were defence witnesses, three were victims and the other four were prosecution witnesses. Overall, these results seem to indicate that prosecution witnesses and victims are more likely to receive the *Witness in Court* booklet before coming to give evidence than those on the defence side, probably because the police will hand out the booklets directly to prosecution witnesses and victims. That said, these figures are all considerably lower than the results of the 2000 Witness Satisfaction Survey, where almost three-quarters (74%) of witnesses recalled receiving information through the *Witness in Court* booklet or some other leaflet (Whitehead, 2001). The 2002/03 British Crime Survey confirms that receiving information about the criminal justice system, in the form of a booklet can increase victim's confidence in that system, albeit here 20% of respondents said they had not had time to read it in the two weeks since they were handed out (Salisbury, 2004).

In addition to the above points, Table 3 details results from the first and second waves of the survey concerning court users' views of the facilities available at the court. Cleary the majority of respondents (n=57) considered the facilities either 'good' or 'satisfactory'. One notable issue here was that none of the three courts under study had its own car parking facilities.

[12] Respondents were self-defined within these categories.

Table 3: Court users' rating of the facilities at Court B*

	Rating					
	0	1	2	3	4	5
	No answer	Good	Satisfactory	Unsatisfactory	Poor	Didn't use
Seating	3 (5%)	27 (47%)	24 (42%)	2 (4%)	0 (0%)	1 (2%)
Cafeteria/ refreshments	4 (7%)	20 (35%)	24 (42%)	9 (16%)	0 (0%)	0 (0%)
Witness waiting area	8 (14%)	24 (42%)	20 (35%)	1 (2%)	0 (0%)	4 (7%)
Toilets	2 (4%)	20 (35%)	24 (42%)	3 (5%)	2 (4%)	6 (11%)
Car parking	5 (9%)	8 (14%)	19 (33%)	5 (9%)	6 (11%)	14 (25%)
Proximity to public transport	9 (16%)	22 (39%)	20 (35%)	1 (2%)	0 (0%)	5 (9%)

***Percentages are of those respondents answering any part of these questions (n=57).**

Respondents to the surveys were also asked to assess their overall satisfaction with court facilities and the provision of information to them prior to the date of trial and actually on the day:

Table 4: Overall satisfaction with court facilities, the provision of information before the date of trial and the provision of information at court on the day at Court B

	n*	Extremely satisfied	Very satisfied	Quite satisfied	Quite dissatisfied	Very dissatisfied	Extremely dissatisfied
Facilities at court	58	11 (19%)	17 (29%)	28 (48%)	1 (2%)	0 (0%)	1 (2%)
Information available before the date of trial	49	11 (22%)	17 (35%)	17 (35%)	3 (6%)	0 (0%)	1 (2%)
Information available at court on the date of trial	46	15 (32%)	17 (37%)	13 (28%)	0 (0%)	0 (0%)	1 (2%)

***Number of survey respondents answering the relevant question.**

The clear theme here is that most respondents were indeed satisfied with the provision of information and court facilities, although the 48% of respondents answering the question who were only 'quite satisfied' with the facilities at Court B would suggest that improvements could still be made.

6.1.4 – The running of trials, delays and witness waiting times

A total of 247 listed trials were selected for inclusion within this project based on the perceived likelihood that they would involve civilian victims.[13] Table 5 sets out a breakdown of these proceedings into effective, ineffective and cracked trials. It is immediately clear that the majority of these proceedings did not in fact develop into effective trials, but were instead cracked (resolved in another way) or ineffective (postponed). More trials were cracked than ineffective at all three courts and this reflects national targets which – as we saw in Chapter 4 – emphasise reducing ineffective trials rather than cracked trials, as opposed to maximising effective trials.

In this study, Crown Court C falls slightly above the national target of a 17% ineffective trial rate, whereas magistrates' Courts A and B achieve their target of 23%. This compares to the 12.7% national average for ineffective trials achieved in Crown Courts and 21.1% at the magistrates' courts (DCA, 2006). Of course, all national figures and targets relate to *all* criminal trials – as opposed to trials selected specifically because civilian victims are involved.

[13] See Chapter 2.

Table 5: Effective, ineffective and cracked trials

	Number of trials	% of this/these courts' trials
Court A		
Effective trials	50	45
Ineffective trials	26	23
Cracked trials	36	32
Total trials	112	100
Court B		
Effective trials	50	43
Ineffective trials	27	23
Cracked trials	39	34
Total trials	116	100
Court C		
Effective trials	12	63
Ineffective trials	2	11
Cracked trials	5	26
Total trials	19	100
Courts A and B (magistrates')		
Effective trials	100	44
Ineffective trials	53	23
Cracked trials	75	33
Total trials	228	100
All courts (A, B and C)		
Effective trials	112	45*
Ineffective trials	55	22*
Cracked trials	80	32*
Total trials	247	100

***Figures do not add up to 100% due to rounding.**

Whether or not the trials under observation went ahead as effective, Table 6 indicates that the vast majority of these proceedings began later than their listed start time.[14] Long delays were especially common in the Crown Court centre, as indicated on Table 7, which shows that the average trial began over 5 hours late at Court C, compared to around 1 hour late at both magistrates' courts. This was precipitated not only by the increased complexity of Crown Court cases and the presence of more witnesses, evidence and (often) defendants, but also, culturally, the observation sessions revealed a reduced sense of 'urgency' amongst professionals in the Crown Court to resolve or begin trials compared with the magistrates' court.[15] This may be because Crown Court trials are usually listed for several days (or weeks) whereas magistrates' court trials can run into difficulties if they go beyond a day. There also appeared to be much greater scope in the Crown Court for amendments to the listings schedule and/or the allocation of judges compared to the magistrates' courts, where the volume of court work meant

[14] In the case of ineffective and cracked trials, the 'start' of the proceedings was deemed to be when the bench entered the room to deal with the case formally, rather than the beginning of less formal negotiations between lawyers beforehand.

[15] Indeed, general sorting out of evidence delayed the start of trial proceedings in 21% of cases at this Court.

trials had to be arranged to coincide with 'windows of opportunity' in which courts, staff, magistrates (or a district judge) and witnesses were all available.

Table 6: Number of effective, ineffective and cracked trials starting late

	Total number of trials*	Number late	% late	Number more than 30 minutes late	% more than 30 minutes late	Number more than 60 minutes late	% more than 60 minutes late	Number more than 120 minutes late	% more than 120 minutes late
Court A	111	110	99	70	63	37	33	7	6
Court B	113	112	99	60	53	24	21	8	7
Court C	18	18	100	17	94	17	94	12	44
Magistrates' courts (A and B)	224	222	99	130	58	61	27	15	7
All courts (A, B and C)	242	240	99	147	61	78	32	27	11

***Excludes 5 cases where start time was unknown.**

Table 7: Lateness averages*

	Average lateness (HH:MM)	95% Confidence intervals (HH:MM)		
		Lower bound	Upper bound	Range
Court A	00:54	00:45	01:03	00:18
Court B	00:43	00:36	00:49	00:13
Court C	05:08	01:27	08:50	07: 23
Magistrates' courts (A and B)	00:48	00:43	00:54	00:11
All courts (A, B and C)	01:08*	00:50	01:26	00:36

***Excludes 5 cases where start time was unknown.**

6.1.4.1 – Witness waiting times

Tables 8 to 11 indicate the percentage of magistrates' court trials which started late and for which witnesses were waiting at court to give evidence at the listed start time. Table 8 shows that civilian witnesses were kept waiting in the majority of cases at both magistrates' courts, with Court B fairing slightly better in this respect in terms of civilian victims and non-victims. Furthermore, Tables 9 and 10 indicate that a markedly smaller percentage of proceedings at Court B involved keeping any kind of witness waiting for longer than 30 or 60 minutes compared with Court A. Difficulties in establishing whether witnesses were present or not made it impossible to draw such conclusions in the Crown Court, albeit that Table 7 again indicates that, on average, proceedings often ran much later in this court, thus suggesting witnesses would be waiting in a significant proportion of cases.

Table 8: Trials starting late in which witnesses were on time and waiting

	Total Number of trials*	Civilian victims	Civilian non victims (excluding defendants, including experts)	Any civilian (excluding defendants)	Police
Court A	111	72 (65%)	59 (53%)	86 (77%)	57 (51%)
Court B	113	66 (58%)	68 (60%)	87 (77%)	56 (50%)
Magistrates' courts (A and B)	224	138 (62%)	126 (56%)	173 (77%)	113 (50%)

***Excludes 4 cases where start time was unknown.**

Table 9: Trials starting over 30 minutes late in which witnesses were on time and waiting

	Total number of trials*	Civilian victims	Civilian non victims (excluding defendants, including experts)	Any civilian (excluding defendants)	Police
Court A	111	51 (46%)	42 (38%)	61 (55%)	41 (37%)
Court B	113	36 (32%)	32 (28%)	45 (40%)	37 (33%)
Magistrates' courts (A and B)	224	87 (39%)	74 (33%)	105 (47%)	78 (35%)

***Excludes 4 cases where start time was unknown.**

Table 10: Trials starting over 60 minutes late in which witnesses were on time and waiting

	Total number of trials*	Civilian victims	Civilian non victims (excluding defendants, including experts)	Any civilian (excluding defendants)	Police
Court A	111	29 (26%)	24 (22%)	34 (31%)	25 (23%)
Court B	113	13 (12%)	16 (14%)	19 (17%)	12 (11%)
Magistrates' courts (A and B)	224	42 (19%)	40 (18%)	53 (24%)	37 (17%)

***Excludes 4 cases where start time was unknown.**

Table 11: Trials starting over 120 minutes late in which witnesses were on time and waiting

	Total number of trials*	Civilian victims	Civilian non victims (excluding defendants, including experts)	Any civilian (excluding defendants)	Police
Court A	111	4 (4%)	4 (4%)	6 (5%)	3 (3%)
Court B	113	3 (3%)	3 (3%)	4 (4%)	4 (4%)
Magistrates' courts (A and B)	224	7 (3%)	7 (3%)	10 (4%)	7 (3%)

***Excludes 4 cases where start time was unknown**

As will be covered in more detail below, the fact that generally fewer witnesses are being forced to wait for extended periods of time at Court B may reflect a more developed pro-victim and pro-witness culture displayed at that court. It may also again be attributed to practical issues such as the fact that the witness waiting room at Court B was situated right next to the two main trial courts whereas – at Court A – lawyers had further to go if they wanted to consult witnesses, often needing to travel between one or more floors of the court. Such practicalities and issues of convenience can make a real difference in a situation where the underlying occupational cultures of some lawyers are still generally cynical concerning the importance or relevance of witnesses' views.[16]

Nationally, the Victim's Code of Practice guarantees victims that they will not have to wait more than 2 hours to give evidence at both magistrates' and Crown Courts. These results confirm that this standard is largely being met at magistrates' Courts A and B.

Of course, we might argue that in a genuinely victim-centred system any waiting around on the part of the victims – and certainly making them come into court needlessly – would be objectionable. It was clear from conducting these observations that lawyers running trials at both magistrates' courts and the Crown Court still prefer the traditional security of having witnesses physically present in court buildings before any decisions are made, and certainly most lawyers and court administrators I spoke to disliked the idea of introducing 'staggered' calling times for witnesses, who presently were all called to attend court just before the theoretical start time for the trial:

[16] See below.

> "You could be very brave and timetable the witnesses, but I'm afraid witnesses are often as disorganised as defendants...they're in that sort of pool where trouble happens" (the Clerk to the Justices at Court B).

This is alluding to the fact that many victims of crime have also faced charges themselves at one time or another (and vice versa) and hence are often not considered reliable. Legal practitioners were almost unanimous in the view that staggered witness calling could not work for this reason. In addition, several lawyers noted that staggered calling could not work in any event, because one could never be sure in advance of, firstly, whether the trial was going to run at all and, secondly, of the order in which the witnesses would need to be called:

> "The actual timing of the witness...is down to the people in the case...staggering witnesses would probably be a good thing if you knew that that case was definitely going to run on that particular day in that particular order, which you don't" (a court clerk at Court C).

Another problem associated with staggering witness times cited by lawyers was the fact that groups of prosecution witnesses can often be from the same family, and therefore will arrive at the same time at court anyway. Whilst practically this may be a truism, it could be argued that the fact that families arrive together is their choice, or is otherwise mandated by everyday practical issues like only having one car. Either way, across other public services (if the court is now to be considered as such) it would be considered nonsense to give all members of that family the same appointment time, say at the dentists. Hence, it is difficult to see why such practicalities should exclude the possibility of staggered calling.

Many lawyers also noted how it was always very difficult to estimate how long an individual witness would take. Discussions with lawyers revealed that most seemed to be working on a presumption of around twenty minutes per witness. Observation results indicate that this is a rather conservative estimate, as the average length of time most witnesses took to complete their evidence was actually longer than this (see Table 24 below).

Clearly, however, we might argue that the issue of witness timing and the overall length of evidence should be dealt with by pro-active judicial case management, not on the morning of a trial but at earlier pre-trial review hearings. We will come to discuss the introduction and operation of the Effective Trial Management Programme below but –

from the outset – it seems that last minute uncertainties as to how a trial will run may be attributed either to a failure of the judiciary to adopt case management as part of their role, or a lack of communication between lawyers and courts.

Of course, on the morning of a trial, requiring all witnesses to be present at the start of the day was also the easier option from the lawyers' and the staff's perspective, although the Clerk to the Justices at Court B acknowledged this to be the "lesser of two evils", the other being the practical problems noted above with staggering witnesses. That said, it was clearly accepted practice in the Crown Court not to call witnesses to the first day of a trial (as listed) if it was known that the trial proper would not begin that day, or if it was known – to a high degree of certainty – that a witness would not be reached that day. Thus, there were some limited indications of the staggered calling of witnesses; although both the Witness Service coordinator at Court C and several of the court clerks informed me that lawyers still preferred on balance to have everyone present at the start of a trial.

More of this practical-based calling of witnesses is needed if the system is to become truly victim-centred, as well as greater use of technologies such as pagers and mobile phones so victims and witnesses do not have to wait around in the court building all day. Such a system was already in place at Court C in relation to police witnesses, whereby they could be paged automatically through the computerised 'Xhibit' system. Through interviewing court staff, it became clear that these facilities also allowed the paging or texting of civilian witnesses, but this facility had not yet been put into operation. At the magistrates' court, the reason for not embracing pagers for use with civilian witnesses was made fairly clear:

> "In some courts they're given pagers, we've stayed clear of that because some of the victims are offenders themselves" (the Clerk to the Justices at Court A).

> "With police and other professional witnesses you can generally trust them to be there, and they're on mobile phones or pagers and they can be out working...they'll be telephoned or paged at a given time and they've got to be able to get to court within half an hour. They therefore are the ones who get a Rolls Royce service. Unfortunately we've not been brave enough to do that with civilians, partly because a lot of civilians would let us down" (Clerk to the Justices at Court B).

Whilst the practicality of this approach must be conceded, it nonetheless seems geared around assisting *ideal* victims. All others are apparently subject to a presumption that

they will steal court equipment, and therefore perhaps 'deserve' to be kept waiting in the building. Hence, some victims appear to be more equal than others in this new system; a notion reflected by Carrabine et al.'s (2004) discussion of a 'hierarchy of victimisation'.

In the last chapter we noted that court staff – especially clerks in the Crown Court and legal advisers at the magistrates' court – would generally have witness waiting times in mind at the beginning of the day; if only because national targets required that these be reduced:

> "There is more of an onus on the court clerk to be aware of witnesses being kept waiting...the court clerk now will actually remind the judge from time to time, 'we have got these witnesses here'" (a court clerk at Court C).

In the magistrates' courts, the district judges were clear that witness waiting times had become an issue of concern for them:

> "Because it was highlighted it's made me approach things I think slightly differently, in the sense that I tend to probably ask more questions about what's happening with the witnesses. If for example a trial doesn't go ahead...I think I've always asked for the witnesses to come into court so that I can give some sort of explanation...If, for example, a solicitor comes in and says 'the case is due to start but can I have half an hour'...I'm much more inclined now to say 'are all the witnesses here?' and perhaps ask one or two preliminary questions about that, particularly if there's been a delay of an hour or two rather than just half an hour" (a district judge sitting at Court A).

> "You have them [witnesses] in the back of your mind, particularly in a situation where a trial's not ready to proceed but it *might be* if you give some time...If there are witnesses out there who are ready to give evidence and if the alternative consequence of not giving time is to adjourn the matter now...you get very reluctant to be adjourning cases unless it's absolutely necessary, because it makes life more difficult for them in two months time when the defence advocate suggests they don't remember very well what happened" (a district judge sitting at Court B).

Of course, we might again argue here that taking a more proactive attitude to witness waiting times on the morning of a trial somewhat misses the boat, when what is really needed is more robust judicial management of the case several weeks before.

Nevertheless, certainly during the observation session there were many examples in the magistrates' courts of district judges and lay benches enquiring about witnesses,

sometimes asking whether they were being kept informed. In one case at the Crown Court, on being asked for more time to resolve a legal point the judge remarked:

> "Yes, but I'm just thinking about the poor old victim" (a circuit judge sitting at Court C).

Bringing the witnesses into court to offer first-hand explanations from the bench was less common, but did happen in a number of cases. In fact, there often seemed to be a conflict here between 'new' ideas of victim involvement displayed by the bench and more 'traditional' attitudes on the part of some prosecutors. Take, for example, this note recorded during an observation session:

> "The legal adviser asks the magistrates if they want to bring the victim into court to explain things to him and the other prosecution witnesses directly. The magistrates say they are happy to do that or have the prosecutor do it 'if that's easier'.
> The prosecutor doesn't seem too thrilled at the idea of bringing the prosecution witnesses in here [the court] so she says she will talk to them" (note taken at trial 175).

In this instance the bench of magistrates was keen to bring witnesses into court to "fill them in" directly on why a trial was not able to proceed that day. This represents a real development over recent years in courts paying regard to victim and witness interests, by which civilians are given practical information, but also have the cathartic satisfaction of being recognised directly by the court (receiving an apology and a recognition that their time has been wasted). That said, such requests on the part of benches were still quite rare in this sample.

Here, the magistrates' idea met with a very dismissive attitude on the part of the prosecutor[17], which in this case frustrated the magistrates' good intentions. Several similar cases of magistrates being 'talked down' by lawyers from directly addressing witnesses were recorded during the course of this study, perhaps suggesting that the working practices of the lay bench are more developed in terms of witness care than some of the professionals before them.[18]. This might imply a general difference between lay ('volunteer') cultures and those of the professionals involved in the criminal justice

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[17] Demonstrated not just by the words spoken, but also quite clearly by inflection, mannerisms and body language.

[18] It was more common to see this happen in Court B than Court A, and it never occurred in Crown Court C.

system. As with the issue of listings, this would suggest magistrates must become more insistent on such points if legal professionals are going to follow suit. In the Crown Court, judges were generally less inclined to enquire about the position of witnesses waiting outside, although it was occasionally mentioned.

6.1.4.2 – Reasons for trial lateness

During the course of these observation sessions, 62 reasons were recorded to explain why proceedings began late. As argued previously[19], this should be considered an advantage of the ethnographic methodology in that a great deal of data can be produced. Indeed, whilst clerks and legal advisers at all three courts were required to record why trials failed to proceed, they were not required to note down why a trial (cracked, ineffective or effective) had started late. Due to space limitations, it is not possible to discuss all 62 reasons here, but a full breakdown of all these can be found in Appendix 4 (Table 52). It is however practical to group the reasons for trial lateness into 12 broad categories, as shown on Table 12:

[19] See Chapter 2.

Table 12: Categories of reasons why proceedings started late and percentage of trials starting late for each category of reason at Courts A, B and C*

	% of Court A trials	% of Court B trials	% of Court C trials	% of Court A and B trials	% of all trials (Courts A, B and C)
Listings issues	48	44	21	46	44
Witness problems (witness reluctance etc.)	54	38	11	41	39
Agreements and deals (plea bargains[20], bind overs[21] etc.)	28	28	32	28	28
Evidential issues	21	13	26	17	17
Defendant problems	16	15	11	15	15
Legal arguments	8	9	53	8	12
Equipment problems and logistics	11	9	0	10	9
Administrative errors and delays	7	7	0	7	6
Lawyer problems (availability etc.)	6	2	0	4	4
JP/Judge problems (availability etc.)	2	5	11	4	4
Errors made by lawyers	2	1	5	1	2
Other	6	15	11	11	11

***More than one reason for lateness allowed for each trial.**

Cleary, listings issues and witness problems were the factors most commonly responsible for delaying the start of proceedings at the magistrates' courts. The time it took for lawyers to come to agreements (or not) was a common cause for delay at all three courts. Not surprisingly, legal arguments delayed the beginning of proceedings in over half the observed cases at the Crown Court whereas this was a fairly rare

[20] The term 'plea bargain' is used in this chapter to describe the process whereby prosecution and defence advocates agree amongst themselves that an alternative, lesser, charge to that originally levied against a defendant will be acceptable to both sides, and the defendant agrees to plead guilty to this charge. This avoids the need for a fully contested trial. The term itself was not popular amongst advocates observed in this study, and phrases like "reaching an understanding" were frequently used in its place.

[21] A 'bind over' is a very old form of case disposal whereby courts have the discretion to 'bind defendants over to keep the peace'. This usually entails the defendant assuring the court that he or she will not commit any crimes within a given period of time, on pain of forfeiting a given amount of money (set by the court). Significantly for the defendant, a bind over does not count as a criminal conviction as it does not involve officially admitting any wrongdoing.

occurrence in the magistrates' courts, as the nature of the cases often means few legal points are raised.

Table 13 breaks the four main categories down into their component reasons for trial lateness. Here, 'resolving listings issues' usually meant deciding which of two cases listed in the same courtroom at the same time should take precedence. These results – taken alongside the cases where another trial had to be dealt with first – reveal the extent of the delays caused by the system of 'double-listing' trials based on the assumption that one will not proceed. If witnesses are being kept waiting as a result of such delays (and Tables 8-11 suggest they probably are) then this would indicate that key barriers to victims achieving centrality in the criminal justice process still rest with the *administration* of courts.[22]

[22]It should be noted that time taken to chase up absent defendants was also a common reason for trial delay: delaying 12% of trials at Court A; 14% at Court B; 11% at Court C; 13% at the magistrates' courts overall and 13% at all three courts. See Appendix 4, Table 52.

Table 13: Breakdown of the main categories of reasons why proceedings started late and percentage of trials starting late for each reason at Courts A, B and C*

	% of Court A trials	% of Court B trials	% of Court C trials	% of Courts A and B trials	% of all trials (Courts A, B and C)
Listings issues	**48**	**44**	**21**	**46**	**44**
Another case dealt with first	24	22	16	23	23
Resolving listings issues	24	22	5	23	21
Witness problems	**54**	**38**	**11**	**41**	**39**
Trying to get a civilian witness to court and/or persuading to give evidence, or debating what to do about absence (summons, warrant etc)	38	30	11	29	28
Trying to get a police witness to court	1	3	0	2	2
Prosecution advocate needed to speak to prosecution witnesses	13	4	0	9	8
Waiting for prosecution witness to finish breast feeding baby	1	0	0	<1	<1
A witness has childcare issues	1	0	0	<1	<1
Agreements and deals	**28**	**28**	**32**	**28**	**28**
Discussions about bind over	6	9	0	7	6
Negotiations on plea bargain	15	17	21	16	17
Defence advocate trying to convince defendant to plead guilty (with no bargain)	4	2	11	3	4
Trying to agree on facts in a Newton hearing	1	1	0	1	1
Coming to a deal that is not a plea bargain involving other civil proceedings	1	0	0	<1	<1
Legal arguments	**8**	**9**	**53**	**8**	**12**
General legal argument	5	4	21	5	6
Legal adviser wanted to check authorities	0	1	0	<1	<1
Late special measures application[23]	1	0	11	<1	1
Debate about need for special measures / more special measures	0	1	0	<1	<1
Bad character application under the Criminal Justice Act 2003[24]	0	2	16	1	2
Debate over bad character application under the Criminal Justice Act 2003	2	1	5	1	2

***More than one reason for lateness allowed for each trial.**

The above notwithstanding, observations at Court A suggest it is practically impossible for a busy magistrates' court to work without a system of double-listing cases. There, aware of the problems caused when both double-listed trials were ready to proceed, listings officers abandoned the system for several weeks. It subsequently had to be reinstalled when it became clear that the court's facilities were insufficient to deal with its caseload without this system. This suggests that, at magistrates' courts at least, the

[23] Again, one can clearly argue that special measures applications should be dealt with at the pre-trial review stage.

[24] The argument from n.23 also applies to bad character applications.

real solution to witness waiting times must be to increase a court's facilities (and, therefore, funding) such that it is physically and administratively able to deal with its caseload in a way that ensures victims and witnesses are not kept waiting for large amounts of time. The caseloads would also of course be reduced again by more effectively managing cases *before* they come to court, such that potentially ineffective or cracked trials can be flagged early enough for the court to drop ('vacate') them from listings schedules, also meaning that witnesses can be de-warned.

Such forward planning is nevertheless difficult to achieve. For example, it is also clear from Table 13 that time was wasted in a significant number of magistrates' court cases persuading, 'chasing up', or convincing absent/reluctant witnesses to give evidence. Again, the underlying problem seemed to be that in many cases such problems only came to light on the day of the trial. We will see below that many lawyers reflected this view in interviews and less structured conversations and, culturally, the widespread opinion amongst lawyers and court staff was that in most cases one simply cannot know in advance with any certainty whether or not a witness will arrive to give evidence.

Nevertheless, the fact that lawyers in such cases spend any time convincing or chasing up reluctant witnesses may be counterproductive to the ideal of a truly 'victim-centred' system, in which I have argued it would be left to the victims themselves to decide (as of right) whether to give evidence or, to adopt the language from Chapter 5, to decide if there was a story to tell. Furthermore, observations clearly revealed that it is not impossible for prosecutors especially to have a fairly clear idea of victims' feelings on giving evidence before the day of the trial, as in many cases the lawyers immediately knew from a note on the case file that the witness was reluctant.

It is also of relevance that, in the Crown Court, last minute witness reluctance seems to have been a considerably less problematic issue. Possibly this is because fewer Crown Court cases are dismissed as 'unimportant' by witnesses or because more time is spent beforehand ensuring witnesses are ready and willing to attend, especially with the advent of case progression officers (although they do not contact victims and witnesses directly). That said, one might argue that witnesses in the Crown Court are more concerned about the consequences of refusing to give evidence, as in one case where a chance observation of a CPS caseworker talking to a reluctant witness outside court revealed that the caseworker was willing to heavily imply to the witness that the judge could send her to prison (presumably for contempt of court) if she refused to give

evidence.[25] As such, whilst we have the witness surveys to cast light on the problems experienced by witnesses when giving evidence, a possible area for future research would be the reasons why witnesses *do* choose to give evidence.

Returning to the point, in a victim-centred system it seems unlikely that a lawyer (who is after all skilled in argument) should spend much time convincing a victim to give evidence if they were reluctant. Presently, however, these results indicate that this is certainly happening in many magistrates' court cases, especially cases of domestic violence. In this study over a third (34%) of magistrates' court trials which were late in starting partly or wholly due to witness reluctance were cases involving domestic violence. This reflects the present CPS policy of pursuing such prosecutions even when the victim is reluctant.[26]

Of course, the goal of trying to reduce witness inconvenience will be less straightforward when other witnesses have attended and are willing to give evidence, but one key witness is reluctant. If the goal is to put *victims* at the heart of criminal justice then it would perhaps be justifiable under such a system to try and convince non-victim (reluctant) witnesses to give evidence when – without such evidence – the trial would collapse, with the victim having attended court for no reason. This illustrates why it is important not to simply truncate victims and witnesses into a single category, but instead to cater for their separate needs.

We might again offer the solution that more communication needs to take place before the day of the trial so that every possible effort has been made to offer and accept any accommodations beforehand, allowing the court to vacate the listing. If it is indeed true that little progress can be made before the day of the trial, then in a victim-centred system it should at least be possible to delay the calling of witnesses (to attend at the court building on the day) until it is certain that no deal can be made to avoid the trial. This would mean a relatively simple amendment to the system of listing trials such that an hour or more was automatically left at the start of the day to allow for the bargaining which, *de facto*, professionals know is going to happen anyway. This would however be a double-edged sword in the sense that, if victims are not called to court at the same time as defendants, they will not be able to contribute in any way to these discussions unless prosecutors are also willing (or compelled by codes of practice) to keep in

[25] Which is technically accurate, but practically highly unlikely.

[26] See below.

contact with them by telephone. We will return to the issue of victim involvement (or lack of involvement) in pre-trial negotiations below.

6.1.4.3 – Reasons and consequences of trials failing to run

As with the late running of trials, it was also possible during the observation sessions to collect a total of 31 reasons why proceedings listed as effective trials failed to proceed as such (that is, were cracked or ineffective). Again, these reasons have been grouped into 9 broader categories on Table 14[27]:

Table 14: Categories of reasons why proceedings cracked or were ineffective and percentage of trials cracked/ineffective for each category of reason at Courts A, B and C*

	% of Court A trials	% of Court B trials	% of Court C trials	% of Court A and B trials	% of all trials (Courts A, B and C)
Agreements / deals	23	31	26	27	27
Witness problems	21	17	0	19	17
Evidential issues	7	3	5	5	5
Listings issues	1	5	0	3	3
Practical and administrative problems	2	2	5	2	2
Illness/death	4	1	0	3	2
Professional embarrassment	2	3	0	2	2
Defendant problems	1	2	0	1	1
Magistrate/judge problems	1	2	0	1	1

***More than one reason for failure to run allowed for each trial.**

As with trial lateness, we can identify two prevailing categories of reasons why trials fail to proceed – agreements/deals and witness problems – and then break these categories down into component reasons on Table 15:

[27] See Appendix 4, Table 52, for full list.

Table 15: Breakdown of main categories of reasons why proceedings cracked or were ineffective and percentage of trials cracked/ineffective for each reason at Courts A, B and C*

	% of Court A trials	% of Court B trials	% of Court C trials	% of Court A and B trials	% of all trials (Courts A, B and C)
Agreements/deals	**23**	**31**	**26**	**27**	**27**
Bind over	3	9	0	6	5
Guilty plea following plea bargain	12	15	16	13	13
Guilty plea (without plea bargain)	8	7	11	7	8
Facts agreed on day in Newton hearing	0	1	0	<1	<1
Case dropped following deal that is not a plea bargain but involves dropping civil charges	1	0	0	<1	<1
Witness problems	**21**	**17**	**0**	**19**	**17**
Witness does not come due to reluctance, or arrives but does not want to give evidence	17	16	0	16	15
Police witness not present	1	1	0	1	1
Witness arrives at pre-planned time but could not come back when the trial is postponed for later in the day	2	0	0	1	1
Witness not here, unknown reason	1	1	0	1	1

***More than one reason for failure to run allowed for each trial.**

These results tell a similar story to those on trial lateness, indicating that many trials failed to proceed at all three courts due to last minute plea bargaining or because of witness reluctance (at the magistrates' courts). As such, it is these issues (along with the listings system at the magistrates' courts) which must be addressed primarily if the criminal justice system is to avoid making victims and other witnesses attend and wait at court for trials which in many instances will not proceed, a problem emphasised on Table 16:

Table 16: Number of witnesses arriving on time for non-running trials at Courts A and B*

	Court A	Court B	Courts A and B
Civilians (including victims and experts but not defendants)	187	217	404
Police (including police victims)	101	109	210
Civilian victims	83	77	160
Civilian non victims (including experts but excluding defendants)	104	140	244
Police victims	7	7	14
Total witnesses	288	326	614

***Excludes trials where the number of witnesses arriving on time was unknown.**

Table 17: Number of witnesses observed giving evidence at Courts A, B and C

	Court A	Court B	Court C	Courts A and B	All courts
Civilians (including victims and experts but not defendants)	94	90	28	184	210
Police (including police victims)	28	20	5	48	53
Civilian victims	43	42	18	85	103
Civilian non victims (including experts but excluding defendants)	51	48	8	99	107
Police victims	4	1	0	5	5
Defendants	37	38	2	75	77
All prosecution witnesses	98	103	33	201	234
All defence witnesses (including defendants)	61	45	2	106	108
Total witnesses (including defendants)	159	148	35	307	342

The briefest comparison between the figures on Tables 16 and 17 illustrates that, at present, a large percentage of witnesses (50% at Courts A and B) are arriving at court to give evidence only to have the trial fold for some reason. In the case of civilian victims, the number sent home from the magistrates' courts because of cracked or ineffective trials was nearly double the number who actually gave evidence, the number (85) split almost evenly between the two lower courts.

On the issue of *ineffective* trials, defence lawyers often expressed a view that prosecution witnesses (including victims) received favourable treatment in the magistrates courts in the sense that benches were more likely to grant adjournments in cases with missing prosecution witnesses than when defence witnesses or defendants were missing. Naturally, if prosecutors were denied such adjournments, they would be forced to proceed without key witnesses, which usually meant they had to offer no evidence:

> "Coming back to this 'level playing field' argument, I do find that there's a very different approach to problems which the defence may have with a case...just generally, because the Crown if they have difficulties find it far easier to get a case taken out than we do...if we have the best reasons in the world it's still with massive reluctance that they take a defence case out" (a defence solicitor appearing at Courts A and B).

Indeed, it was clear from these observations that benches at both the magistrates' and Crown Court were now far more willing to proceed without defendants present than had previously been the case when prosecution witnesses had attended.

6.1.4.4 – Victim and witness consultation

Given that so many trials fail to proceed as planned it was important for this research to address how victims and witnesses were treated in this situation, having arrived at court to give evidence. Broadly speaking, the main observation on this point was that defence and prosecuting lawyers tended to agree amongst themselves – in conjunction with the legal adviser at the magistrates' court – as to how a case should be best resolved. This might include offering a bind over, conditional discharge or alternative charge to the defendant. The lawyers' task then became to 'sell' the plan to defendant and victim respectively. This meant that victims were rarely given much influence over the decision *per se* but were rather expected to (after some convincing) acquiesce to the decision already made by lawyers. One barrister described this situation in the following terms:

> "We're encouraged to seek the view of the complainants by the CPS. I don't know if that's a back-covering exercise, it strikes me that often it is because I will go and see them and I can get one of two responses; 'yes that's great go ahead', or 'no that's wholly unsatisfactory', but often the decision has already been made" (a barrister appearing at Courts A, B and C).

This position has some resonance with the issue of victims' accounts described in Chapter 5; for if prosecution and defence lawyers negotiate and arrive at what they perceive to be and referred to as "a sensible outcome" to a case, they are effectively bargaining over which version of the *story* to present to the court. This seems to reflect the findings of McConville et al. (1991) that prosecutors (and defence solicitors) will actively seek to resolve most cases through bargaining rather than advocacy.

On this point, there seemed to exist somewhat of a conflict between stated norms and working practices. At interview, most lawyers who worked as prosecutors told me they would usually seek the opinion of victims before accepting any offers of plea bargaining or offering a bind over. In the courtroom, however, what actually happened was that the decision to accept a plea bargain or other resolution would be made by lawyers who would then "sell the plan to the complainant", and prosecutors would often use this exact phrase. In such instances, this meant that the opinions of victims or other witnesses were not being sought or considered before making the actual decision, save through lawyers estimating how 'easy' it would be to convince them of the utility of the plan.

Of course, the fact that many practitioners (especially prosecutors) were expressing the concern that resolutions must be 'sold' to witnesses may itself indicate a tacit, if somewhat begrudged, acceptance amongst lawyers that witnesses' opinions *might* matter. Nevertheless, it is clear that such development did not yet extended in many cases to the practical step of genuinely taking the views of such victims and witnesses into account. Hence, in many cases practitioners in cracked or ineffective trials were in fact conducting themselves in the traditional way by making such decisions themselves with little regard to the positions of victims and other witnesses. Despite this, however, many lawyers I spoke to clearly indicated that victims were important to the process. This seems to indicate how firmly engrained working practices – or occupational cultures – can operate in an almost subconscious manner. In this case, the 'traditional' principle that prosecutors and defence lawyers come together to decide how best to resolve a case without reference to victims or witnesses often appeared to trump the newly emerging view that their opinions should be sought. Yet many of the lawyers themselves did not see things this way, with several of them speaking with apparent pride during interviews and other conversations about how they now 'always' consulted victims in these circumstances.

An analogy can be drawn here with so-called institutional racism in the police force; whereby 'racist' outcomes result from police work not because individual officers purposely choose to act in a 'racist way' – Lord Scarman's (1981) 'bad apples' – but because these results are the inevitable outcome of the organisation of the police and the engrained occupational practices passed on from officer to officer. The observation sessions in this research clearly confirmed that trial lawyers – like police officers – learn much of their trade by swapping stories and anecdotes, and by observing each other. As with police officers, this provides them with a 'cultural toolkit' (Chan, 1996) from which to draw 'ready made' solutions to the various problems they face when carrying out their work. The point, however, is that this toolkit still appears to lack (in most cases) a practical solution to the 'problem' of victims and witnesses having opinions as to the running of trials (or anything else). Lawyers are thus forced to fall back on more traditional practices, making the decisions themselves without reference to these other actors. Hence, whilst most lawyers are now aware of the issue (or, at least, the rhetoric) that victims' needs must be met and that their opinions might matter, many seem to lack the practical tools to put the theory into practice. In one respect this is a training issue,

but arguably a far greater problem is that occupational cultures are lagging behind the new victim ethos.

Nevertheless, observations did reveal exceptions to this general practice, especially in cases of domestic violence, It was clear that, to many prosecutors and agent barristers working for the Crown, the CPS policy of generally going ahead with domestic violence cases even against the victim's wishes was controversial.[28] Even when such trials proceeded, prosecutors would often remark that they could not see the point of going ahead. In such cases – and in other cases too in which lawyers for whatever reasons did not wish to go ahead and/or felt it was not worth it[29] – there was usually an acknowledged agreement between the professionals in the courtroom to "try hard to get this one cracked". In cases of domestic violence this reflected the reality that – whilst the fact that victims and defendants were reconciled could not be an *official* reason for cases failing to proceed – motivated lawyers could usually find some other justification in this situation. This often involved convincing defendants to plead guilty or – in the case of agent prosecutors at the magistrates' courts – convincing the CPS to accept a plea to a lesser charge or to offer the defendant a bind over. Indeed, sometimes the fact that parties had reconciled would still surface in a prosecutor's official submission as a secondary reason for the case not proceeding as planned. Hence, such victims were *de facto* bringing an end to the case through their own actions.

6.1.4.5 – Effective trial management

We saw in Chapter 4 how in 2003 the Effective Trial Management Programme (ETMP) came into force, with the goal of reducing ineffective trial rates. In fact, these moves were pre-empted – certainly at Court A – by the introduction of stricter case management during the previous street crime indicative (interview with a barrister appearing at Courts A, B and C). Also, existing meetings concerning persistent young offenders had had much the same effect as the new case progression hearings (a legal adviser working at Court B). In addition, one legal adviser at Court A recalled that, years ago, the listings office had carried out most of the work now delegated to the new case progression officer.

[28] See below.

[29] Which, probably contrary to victim interests, was sometimes admitted to include other work at the office.

Nevertheless – in the case of the ETMP – the use of court time was to be streamlined through the designation of 'case progression officers' (CPOs) who would stay in contact with the CPS, police, solicitors, Witness Service and other relevant agencies to identify issues and problems early, *before* the trial date. Such issues – including bad character and special measures applications, witness availability[30] or reluctance – would then be recorded on so-called 'certificates of readiness' which would be presented to the court at 'case progression hearings', which were a development of the existing system of 'pre trial reviews' (PTRs) in the magistrates' courts and 'plea and case management hearings' at the Crown Court centre. As such, every court, CPS branch, police area and solicitor's firm should have a named CPO to take on these responsibilities.

Interviewing the case progression officer at Court C revealed that she would usually start working on a trial about two weeks before the date of the hearing, because she knew the solicitors in question would not begin "sorting it out" before then. This itself is a very telling point, and indicative of a fairly sorry state of affairs. She would then telephone all the relevant agencies and the solicitors to enquire whether they were ready for trial. Unlike at magistrates' Courts A and B, agencies were not sent the certificates of readiness to complete themselves, but rather these were filled in by the CPO personally, based on telephone discussions. The rationale here – originally proposed by the presiding judge at Court C – was that a verbal-based system would ensure solicitors in particular applied their mind to the relevant issues and did not simply "tick a box". In addition, the Court CPO would hold a weekly meeting with representatives of the police, CPS and the Witness Service to discuss upcoming cases. They also discussed any problems which had occurred in trials the previous week, and the example was given of an incident that month where a witness had complained that the prosecution had not come to speak to her after a trial (case progression officer at Court C).

Generally, the ETMP was received with a cautious optimism, certainly amongst court staff:

> "Any system that applies psychological pressures as much as anything is going to have an impact. It requires a will on the part of the legal advisers and the magistrates and the district judges to police it, enforce it in some ways. Things like case progression officers I think are a good idea. I think the impact of case progression officers, the impact of proactive legal advisers, proactive magistrates is that you do create this psychological pressure on advocates who realise that

[30] The MG11 witness statement form completed by police officers now has a question regarding witness availability and dates to avoid (Home Office 2004h).

things that may have got through the net before won't get through the net this time, or at least they will be subject to rigorous scrutiny...psychological pressure has led to the improvements we've seen so far" (a legal adviser at Court B).

District judges at Courts A and B expressed similar views:

"I think pre-trial reviews are extremely important, they've got to be effective...there are occasions when solicitors don't apply their minds to cases until a late stage. You also, to be fair, have the situation where the Crown prosecuting solicitor doesn't always apply his or her mind to it" (a district judge sitting at Court B).

"There has been a considerable improvement in the pre-trial structure...we've adopted a practice – before all the case management legislation came in – of having special pre-trial review courts that were generally manned by district judges, and the reason for that was then hopefully you've got a bit of continuity...you felt a bit more in control of the situation. Advocates have gradually got used to the fact that the district judges are going to give far more directions as to what they have to do, we'll be asking more awkward questions if they haven't done it, so the whole approach from every angle has tightened up...it was all a bit loose and vague [before]" (a district judge sitting at Court A).

Nevertheless, there were also many criticism levied at the new system of case progression officers and hearings. Perhaps inevitably, many solicitors viewed the ETMP and the wider Criminal Case Management Framework quite dismissively as yet another layer of fruitless bureaucracy. For example, one solicitor appearing at Courts A and B considered the system a "joke", largely because he had returned more certificates of readiness to the courts indicating he had no instructions from his clients than he had indicating he was ready to proceed with a trial. The reason for this were essentially what this solicitor saw as the general unreliability of his clients, who would not keep appointments and often would not give any opinions on the case – even if pushed – before the day of the trial. From his perspective, completing the relevant form made little difference to the court when it came to case progression hearings:

"I say I've got no instructions, the district judge says 'well, we'll just have to see what happens on the day, it'll go ahead'...what is the sanction to it? Because they're not going to take the case out...[case progression officers] are doing their job, but I am trying to assess what is achieved by it" (a defence solicitor appearing at Courts A and B).

Certainly it seems most unproductive for the court to blame the solicitor whilst the solicitor blames his clients. This issue of 'sanctions' arose a number of times during discussions with lawyers and other court staff. The general view seemed to be that, in

the magistrates' court, benches (including district judges) were not being strict enough with parties in the administration of case progression hearings (still commonly referred to as 'PTR's):

> "The pre-trial review process I think is the real problem we have in the magistrates, I don't think enough people have enough information about the files on the day...the pre-trial review should be conducted far more harshly" (a barrister appearing at Courts A, B and C).

Hence, the argument could be made that the purely "psychological pressure" placed on advocates by such hearings is not always enough. The impression of this particular barrister was that issues like the number of witnesses and the possibility of the defence accepting alternative charges are not sufficiently finalised at these hearings, due to a lack of information on all sides. Given such difficulties, the criticism is that magistrates and district judges are prepared to let such matters pass during the case progression hearing to be resolved on the day of the trial. The same respondents contrasted this position to that of the Crown Court equivalent, which he considered far more robust:

> "The process in the Crown Court has changed significantly lately...[judges] will go through it systematically" (ibid).

That said, the barrister in question had been getting the impression more recently that magistrates were becoming more proactive during case management hearings, possibly following some central direction. For my part, it was certainly the case towards the end of the observation sessions (Autumn 2005) that benches in the magistrates' court were questioning advocates much more readily on whether matters delaying trial proceedings on the day could have been dealt with at an earlier stage.

Some interviewees felt that what they considered to be the inadequacies of the PTR/ETMP system were down to lack of organisation or resources in various organisations:

> "It's doing something [the ETMP], it's bringing things to our attention, but whether there are the staff behind the scenes in CPS, police and defence lawyers to get a grip of it at the minute I'm not quite sure...even when we get them into court when they put them in for a case progression hearing...you're having to adjourn maybe another couple of days to find out what the position is" (a legal adviser at Court A).

> "It's almost unfair in some ways to place a lot of emphasis at the door of the court when a lot of the issues leading to cracked and ineffective trials lie with other

organisations, for example the CPS and inefficiencies within that organisation and sometimes with defence solicitors and issues of witnesses etcetera, being told at the last minute" (a legal adviser at Court B).

Indeed, more than one court professional believed a 'blame culture' had arisen:

"Advocates seem quite happy to blame the court for double-booking, the witnesses seem to blame the justice system or [they are] blaming the court rather than- if they'd had better information when the police were taking statements from them, or from the prosecutor. There just seems to be a system where people apportion blame to one party or the other. They all get pretty cheesed off...everybody's quite happy to tell the witness 'well the court can't deal with that today' rather than it being a genuine explanation" (a legal adviser at Court B).

One resolution proposed by this respondent was for the CPS to ensure the same prosecutor worked on a case from start to finish, so that information would not be mislaid and time would not have to be wasted chasing it up.

Another lawyer – a solicitor advocate who worked at Courts A and B as an agent for both prosecution and defence – was supportive of the goals behind the ETMP and, unusually, believed it was possible to predict in advance roughly what was going to happen on the morning of a trial. Nevertheless, this respondent was scathing of the lack of organisation on the part of the courts and the CPS that would make the system work. On having the system of case progression officers explained to him he reacted in the following way:

"Great, I hope that's gonna' work!...It depends on the quality of the person who's appointed a case progression officer, it depends whether that person is going to be proactive. What you've got to remember is we're dealing with civil servants, you get that civil servant mentality[31], Monday to Friday, nine till five...It depends I think on the experience of the person, whether they will be able to use their common sense and their initiative rather than just relying on that form...because, unfortunately, we're getting so many forms with boxes to tick, people are forgetting about the human being outside of it...you've got a fair idea of what's going to happen [on the day of trial]...I just don't think they're organised properly to be able to do an efficient job...somebody needs to grab hold of their neck!" (a solicitor advocate appearing at Courts A and B).

[31] With the creation of Her Majesty's Courts Service in April 2005, staff at all three courts became civil servants, a move which has since led to industrial action in the courts under review.

6.1.4.6 – The 'inevitability' of cracked and ineffective trials?

As alluded to above, underlying many of the criticisms (and even the praises) of the Effective Trial Management Programme was a very widespread view amongst practitioners, administrators and court staff that, ultimately, it was *impossible* to eliminate many of the problems that caused delays, cracked proceedings and adjournments on the morning of a trial. The following extract seems to typify this view:

> "It is part of the trial process that trials don't go ahead on the day...it is an unavoidable part. If it's guilty pleas then so be it, I'm afraid that's the way it will always be, I don't think that will ever change" (a barrister appearing at Courts A, B and C).

Much of the blame for this was placed with the unpredictability of witnesses, including victims, who we have seen were not usually considered reliable by court staff or lawyers:

> "You're always going to have the problem of witnesses not turning up for various reasons, and most of those reasons you're not going to deal with effectively anyway because it's the person's choice" (a legal adviser at Court A).

Aside from witnesses themselves, many interviewees – in common with the solicitor cited above – commented on the fickle nature of defendants, and how they were frequently unwilling to plead guilty (whether to an original or amended charge) before the day of the trial:

> "There is still a substantial hard core of defendants who will not until the very last minute give their final position. I don't think there is anything you can do about that...their whole lifestyle isn't organised, they're not there by coincidence. And they are the sort of people who have a chaotic lifestyle, and who will bury their head in the sand, and who will leave things until the very last minute, that's the reason why they're facing criminal charges in many cases, because they're not the most accomplished of individuals" (a defence solicitor appearing at Courts A and B).

> "People who rob old people and steal from their brethren...they get to the door of the Court and it's rather like Friday 8th, it's dentist day...The bottle goes, that's why there are cracked trials...a lot of them, they don't think the witnesses are going to turn up, but they do! And more and more the coppers go and fetch them now, they fetch them, they're proactive in that respect, and rightly so...They finally see reason [on the day of the trial]. And in the trial you're not worried about six or seven other cases [as at the PTR] it's him, you and him on his own...And you say to him 'look, this is judgement day' and sometimes they will

see your point, and you will beat them down by sheer pressure, sensible pressure" (a solicitor appearing at Court B).

Indeed sometimes applying such "sensible pressure" to defendants would itself be the cause of delay on the morning of a trial:

> "Magistrates don't understand that this happens, that we have arguments with defendants...but to be able to batter the criminal mind with common sense takes a little bit of time" (ibid).

Of course, such attitudes taken to defendants by solicitors clearly reflects the findings of McConville et al. (2004), who noted that such lawyers will have stereotypical impressions of their clients and their cases and seek to apply these in their practice.

One interesting point in the penultimate extract is that the 'court door' – as well as focussing the minds of defendants – may also focus the minds of the lawyers, who during case progression hearings (PTRs) must often 'juggle' several upcoming trials at once, along with any other work they may have at court that day. The extract also emphasises the very important point that many defendants appear to change their mind and plead guilty on the morning of the trial (thereby cracking the trial) precisely *because* witnesses have chosen to turn up to give evidence, especially in domestic violence matters.

Given such views regarding the inevitability of late running, cracked and ineffective trials, some interviewees were willing to admit that – in their view – almost everything that could be done to reduce these to a minimum had already been done:

> "There's a certain point at which you'll never improve any further, there will always be some cases – for whatever reason – that go off on the day. But there existed quite a bit of scope to reduce the number of those. These initiatives are actually beginning to address that, and are reducing the number of ineffective trials on the day, they really are...I think we're pretty effective in the Crown Courts, not a lot more room for much more improvement, we're at that stage where it would need a heck of a lot more effort to get a little bit of improvement. I think at the magistrates' court there is still scope for improving it a bit more" (the Chief Crown Prosecutor).

Finally, one court clerk at Court C summed up the situation in the following terms:

> "You're inefficient by adjourned matters I presume, but then that's matters beyond the court's control in many ways...you could summarise it all by saying as long as you have got the right people on the right day, in the right room, for the

right case, anything else is in the lap of the gods, whatever happens that particular day" (a court clerk at Court C).

6.1.4.7 – Domestic violence: 'one on its own'?

Before leaving the issue of the running of trials, delays and witness waiting times, it is important to discuss the 'special case' of domestic violence. As has been alluded to earlier in this thesis[32], the challenge faced by prosecutors wishing to pursue domestic violence charges is essentially that victims of such crimes – having initially reported the incident to the police and made a statement – often retract their complaint at a later date and, as such, become unwilling to give evidence in court. In the past this has often led to cases collapsing on the day of the trial, with the victim (as the only source of evidence) failing to arrive to give evidence, or refusing to do so. Naturally this would cause a great deal of uncertainty for prosecutors on the morning of a trial. As one barrister put it:

"Domestic violence is one on its own I'm afraid, there is no set pattern to that" (a barrister appearing at Courts A, B and C).

In an attempt to tackle this ongoing problem, the CPS has initiated a policy intended to bring more of these cases to justice. The policy essentially has two elements. Initially, the aim is to ensure police officers collect as much evidence as possible with which to peruse a conviction. Whereas previously officers have concentrated simply on taking the victim's witness statement, the police are now obliged to gather other details. These might include information such as what the officers saw when they arrived on the scene, evidence (including photographs) of injuries, and evidence from onlookers. The rationale behind this is to build the strongest case possible which is not necessarily completely reliant on the victim's evidence. The role of the CPS is therefore to ensure – when reviewing the case file – that every possible avenue of investigation and evidence gathering has been followed.

The evidential aspects of the CPS policy are therefore fairly straightforward. Confusion, however, seemed to exist amongst many lawyers about the second aspect of the policy, concerning the public interest criterion. Indeed, the Chief Crown Prosecutor in the area under review admitted that it was causing a lot of confusion. Indeed, after the interview

[32] See Chapters 3 and 4.

this respondent said it had been useful for her to articulate the policy. As such, it is worth quoting this respondent's explanation of the policy at some length:

> "Sometimes you can't run the case because the victim refuses to give evidence. If they refuse to give evidence we need to take a careful look at that because we have the means of getting witness summonses and making them come to court, and the court ultimately have got the option of holding them in contempt if they refuse to give evidence. In a domestic violence case a court would be very loathed to hold them in contempt. But, as a result of our domestic violence policy, the policy is based on everybody having a much greater awareness and knowledge of the drivers that drive people who are victims of domestic violence. So the policy recognises it is not as simple as a woman saying 'I don't want to give evidence, I've forgiven him'[33]...It's often not as simple as that, there will be all sorts of drivers which might be financial – 'where am I going to live if I leave?', a lack of confidence that victims of domestic violence can often have a very, very low esteem. So that actually that individual might not be capable of making any major decisions about their lives because they're just totally undermined, feel pretty useless and downtrodden and the thought of making a stand-. There can be a lot of drivers in there that will drive somebody. We say 'it's their choice not to prosecute' but actually you could say the choice is being driven by factors" (the Chief Crown Prosecutor).

This response was indeed delivered in a very 'stop-start' manner, indicating that the respondent was indeed concentrating in order to articulate the exact nature of the policy. My own interpretation of this response was that domestic violence victims were to some extent being treated as parties with reduced capacity, somewhat akin to children or the mentally ill. The Chief Prosecutor indicated some agreement with this proposition. Indeed, many lawyers were clear on the point that:

> "These ladies...they need to be protected from themselves" (a barrister appearing at Courts A, B and C).

Of course, we might well question the legitimacy of such a view in a victim-centred system, as it seems to imply the label of 'victim' is to be forced on some people who do not accept it.[34]

Nevertheless, many practicing lawyers outside the CPS seemed somewhat confused by this policy. On more than one occasion prior to the above interview, I had it described

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[33] The tendency for domestic violence sufferers to forgive the perpetrators of such crimes was demonstrated in an interview with the director of a local private prison, who told me he would often use his discretionary powers to prevent these victims visiting their abusers in prison.

[34] Just as the label of 'vulnerability and intimidated, and in need of special measures' is apparently applied to some victims without their consent, see below.

to me as "prosecuting all domestic violence cases, no matter what". Indeed, one solicitor went so far as to suggest that the policy rendered the public interest test – utilised by Crown prosecutors – redundant, because *all* cases of domestic violence were automatically considered 'in the public interest' to run as trials. Even a district judge described the policy as so:

> "They [the CPS] have guidelines as to how they approach domestic violence cases, and the general thrust of it is 'prosecute every case'" (a district judge sitting at Court A).

The issue of protecting victims from themselves arose in several conversations and interviews. Many lawyers and court staff believed the real underlying concern for the CPS was that victims of domestic violence might be in genuine danger if prosecutions were not secured, even if this was against their stated preference:

> "I think it's right that the state should prosecute in domestic violence cases regardless of what the complainant says, simply because the complainant is in an extremely vulnerable position" (a solicitor advocate appearing at Courts A and B).

> "I think society accepts that there is a problem with domestic violence and people who end up dying are people who didn't need to get to that stage had something else happened earlier [a prosecution]" (a legal adviser at Court A).

Some lawyers took a slightly less sympathetic, more politicised view:

> "My personal view is that I think it is politically motivated...this has now unfortunately become the philosophy of the CPS – not just here but nationally as well – that they will not, unless there's some *exceptional* reason, drop a domestic violence case, for the simple reason, what they don't want – and I can see where they're coming from on this – Friday afternoon drop the domestic violence case because the lady retracted, Sunday afternoon she's murdered. The next day the finger's pointed at the CPS, 'why did you drop it?'" (a solicitor advocate working at Courts A and B).

The Chief Crown Prosecutor was indeed clearly concerned about the physical safety of such victims:

> "Another important driver is that the statistics show that the most dangerous time for a women is when they leave. If you look at domestic violence murders a large proportion happen when the woman's left...that is a very very vulnerable time and that's when a big proportion of women are killed" (the Chief Crown Prosecutor).

This being the case, magistrates in particular were receiving training on domestic violence, including specific information and statistics on the nature and prevalence of domestic abuse and homicides within domestic settings.

For its part, the CPS would refer victims of domestic violence on to other organisations for help and support, with a view to hopefully convince them to give evidence:

> "We can play a part in providing support that might help a victim make a slightly different decision and decide 'I'm going to make a stand here and I'm going to go through with this prosecution'. And we can do that partly by explaining the process – by explaining what's involved – but also by tapping into other sources of help for that woman...We can actually refer people on, give people details of how they can get additional help, which might be women's refuges, all the voluntary sector domestic violence centres where women can go to get advice and help...And this is where our witness care officers come in, because they're quite a key link because they will phone up a domestic violence victim....they can give them advice on where to go...sometimes it just requires a bit of reassurance and explanation of the process...By tapping in to all that we can sometimes get a woman to stick with the process, so we've still got our evidence" (the Chief Crown Prosecutor).

For the purposes of the present research, it is perhaps useful to emphasise that domestic violence trials were still considered very much a problematic issue at the three courts under review. As theory would suggest, in many cases the Crown were seeking to rely purely on the evidence of one victim who was reluctant to give evidence, or flatly refused to attend court. When victims did arrive at court, it was common for them to arrive in the company of the defendant, sometimes holding hands.

Such points were of course raised at the pre-trial review stage, although again such issues were often inherently unpredictable. On this point, the Local Criminal Justice Board had resisted piloting new specialist domestic violence courts to deal with such pre-trial hearings on the grounds that it was thought effective processes were already in place. In addition, the Regional Director of Her Majesty's Court Service believed the term 'specialist courts' had a tone of prosecution bias about it that he and his colleagues on the Board wished to avoid.

In most cases, on the morning of a domestic violence trial the prosecutor seemed prepared for difficulties, in the sense that there was often a clear note on the file[35] that the victim was reluctant to speak and/or a copy of the victim's so-called 'retraction

[35] The CPS flagged up domestic violence cases with a prominent yellow sticker on the case file.

statement'. Nevertheless, this usually raised considerable debate as to what course of action might be taken and – at this stage – many prosecutors showed reluctance to implement the letter of the CPS policy, often claiming there was just "no point" given the witness' reluctance and the fact that the parties were reconciled. This was especially common amongst agent barristers or solicitor advocates working on behalf of the CPS, as opposed to actual Crown Prosecutors representing the CPS directly. This led some agent prosecutors to suggest that they were purposely given the more "difficult" cases to deal with.[36]

From talking to the Chief Crown Prosecutor, it became clear that the 'proper' course of action under the policy would be to compel the witness to attend court through a witness summons, and if that failed to achieve the desired result, to actually obtain a witness warrant and have the victim brought to court. Indeed, it was fairly common in these cases for victims to have already had a witness summons served upon them before the date of the trial; sometimes because they had failed to attend a previous trial and sometimes because the problem had been highlighted at the pre-trial review stage. Nevertheless, in court, whilst prosecutors often *spoke* about the possibility of taking further steps (a warrant), in practice they would usually redouble their efforts at negotiating with the defence to get the case resolved in another way in order to avoid it. Indeed, this was usually achieved:

> "In the majority of cases we reach alternative conclusions before that happens [issuing a witness warrant]" (a solicitor advocate appearing at Courts A and B).

Several solicitor advocates and agent barristers openly remarked that they simply were not prepared to take such a step, even in the face of the CPS policy. Of course, such admissions were never made in front of the defendant, and a number of lawyers admitted to me that the only purpose of discussing a witness warrant was to put pressure on the defendant to plead guilty or accept a lesser charge:

> "I myself have applied for a warrant in one particular case, and I didn't actually expect to get the witness to court, and I didn't do it for that reason. I did it to build psychological pressure against the defendant" (a solicitor advocate appearing at Courts A and B).

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[36] 'Difficult' not in the sense of the legal and factual issues to be adduced, but in the sense of needing to deal with a generally 'messy' and emotionally charged situation which they considered different from their more regular work. See below for more discussion on this point.

In fact, throughout the observation sessions, no domestic violence victims were actually compelled to give evidence, save by the prosecutors' powers of persuasion before proceedings began. This is not to say, however, that a more forceful approach was never taken:

> "I've had domestic violence cases where the witness has been summoned...I've had to make her a hostile witness so I can actually lead her on her statement to get the evidence in...it doesn't give very much credibility in a case" (a solicitor advocate appearing at Courts A and B).

The Chief Crown Prosecutor was also clear that witness warrants had been used in a significant number of these cases, which in her view was not always the affront to victims' preferences it might seem:

> "On the face of it...that's taking control and choice away from people...but actually apparently what the domestic violence research does show is that actually that can be quite helpful for a woman, because if she's got a witness summons to go and give evidence against her partner – or whoever it is – the choice is taken from her, so there's no argument from the man, the defendant, 'you tell them you're not coming', they've got a piece of paper that says 'I've no choice, I've been told I've got to'. And actually apparently a number of women report that this is quite helpful" (the Chief Crown Prosecutor).

Notwithstanding this, there was an admission at this stage that there was in fact little more that could be done after a witness warrant had been tried:

> "There's a limit to how far you can push...when you get to court – you've taken out your witness summons – if people are still absolutely adamant they're not going to give evidence, in a number of cases we have to leave it, we have to accept that and drop the case" (ibid).

This was certainly the situation in trials observed for this research, where the "ultimate sanction" of having victims brought to court was never enforced.

Given the complex issues that come with prosecuting a domestic violence case, it is quite revealing to compare the effective trial rates for the majority of trials observed for this research with that of domestic violence trials as a distinct group. These comparisons are drawn on Table 18:

Table 18: Effective, ineffective and cracked trials / domestic violence (DV) trials

	Number of trials / DV trials	% of courts' trials / DV trials
Court A		
Effective trials / DV trials	50 / 12	45 / 48
Ineffective trials / DV trials	26 / 6	23 / 24
Cracked trials / DV trials	36 / 7	32 / 28
Total trials / DV trials	112 / 25	100 / 100
Court B		
Effective trials / DV trials	50 / 7	43 / 30*
Ineffective trials / DV trials	27 / 4	23 / 17*
Cracked trials / DV trials	39 / 12	34 / 52*
Total trials / DV trials	116 / 23	100 / 100
Court C		
Effective trials / DV trials	12/ 4	63 / 80
Ineffective trials / DV trials	2 / 0	11 / 0
Cracked trials / DV trials	5 / 1	26 / 20
Total trials / DV trials	19 / 5	100 / 100
Courts A and B (magistrates')		
Effective trials / DV trials	100/ 1 9	44 / 40*
Ineffective trials / DV trials	53 / 10	23 / 21*
Cracked trials / DV trials	75 / 19	33 / 40*
Total trials / DV trials	228 / 48	100 / 100
All Courts		
Effective trials / DV trials	112/ 2 3	45* / 43
Ineffective trials / DV trials	55 / 10	22* / 19
Cracked trials / DV trials	80 / 20	32* / 38
Total trials / DV trials	247 / 53	100 / 100

***Figures do not add up to 100% due to rounding.**

In this study, a trial was classified as being 'domestic violence' when it involved intimidation or violence between members of the same family, partners or other persons in a domestic setting. This was intended to be a wide definition although, ultimately, the cases observed were all stereotypical examples of husbands assaulting wives and boyfriends assaulting girlfriends.

The first point to note on Table 18 is that the number of domestic violence trials observed in Crown Court C (n=5) is not sufficient to draw meaningful comparisons with the overall effective, ineffective and cracked trial rate at this court. Aside from this, a very interesting result here is the overall similarity between effective, ineffective and cracked trial rates at Courts A and B. Another interesting set of results can be derived from comparing the average lateness figures for all trials with those of domestic violence trials, as shown on Table 19:

Table 19: Lateness averages for all trials / domestic violence trials*

	Average lateness (HH:MM)	95% Confidence intervals (HH:MM)		
		Lower bound	Upper bound	Range
Court A	00:54 / 00.54	00:45 / 00:35	01:03 / 00:73	00:18 / 00:38
Court B	00:43 / 00:41	00:36 / 00:26	00:49 / 00:57	00:13 / 00:31
Court C	05:08 / 07:27	01:27 / -05:05	08:50 / 19:58	07: 23 / 25:03
Magistrates' courts (A and B)	00:48 / 00:48	00:43 / 00:36	00:54 / 00:60	00:11 / 00:24
All courts (A, B and C)	01:08* / 01:25	00:50 / 00:28	01:26 / 02:23	00:36 / 00:57

***Excludes 5 cases where start time was unknown.**

Given the degree of complexity described above – including the need to formulate a plan of action between parties in such cases and/or spend time trying to find the victim or convince her to give evidence – we might expect domestic violence trials to run (or not run) later than trials in general. Clearly though this was not markedly the case, albeit the confidence intervals for the smaller number of domestic violence trials are wider.

The findings on Table 18 and 19 are puzzling and certainly unexpected, because the clear cultural impression derived from practitioners is that domestic violence trials are singularly problematic and "one on its own". In complete contrast, these tables seem to indicate that domestic violence proceedings do not run significantly differently from other trials. Admittedly, this came as a considerable surprise to me, as my own impression from sitting in on such trials was clearly that, overall, they ran as effective less often and almost always started later than other trials.

To speculate, one explanation might be that cases of domestic violence[37] tend to concentrate the minds of prosecutors (and defence lawyers) such that negotiations and debate are carried out more smoothly and efficiently at the pre-trial stage compared with other types of case. Certainly, all the lawyers I observed or spoke with during the course of this research were well aware of the particular hurdles that had to be overcome when dealing with domestic violence. As noted already, the focus on these kinds of cases in recent years may mean that prosecutors have more of the relevant information to hand on arriving at court compared to other 'problematic' cases. Hence, greater preparedness to deal with the challenges of domestic violence specifically may be counteracting the associated increased workload on the morning of a trial, and hence domestic violence cases do not lead to unusually long delays. As such, impressions like those given above

[37] Replete with bright yellow stickers on the case file.

of domestic violence as a particularly 'difficult' kind of trial may be an illusion based on a few unusual cases that nonetheless stick in the minds of practitioners and researchers both.

6.2 – THE TRIAL ITSELF

6.2.1 – The calling of witnesses

As noted on Table 17, a total of 342 witnesses – 103 civilian victims – were observed giving evidence in this project. The vast majority of these witnesses gave evidence in the traditional manner, from a witness box at the Crown Court and (adult) magistrates' courts. At Court C, the witness boxes faced the jury, with the defendants positioned off to one side so not to be in the direct eye line of the witness. This was not so, however, in the magistrates' courts, where the dock was usually directly opposite the witness box such that the witness would be looking at the defendant. Indeed, in some courtrooms at Court A (by far the oldest of the three buildings) the witness box was situated right next to (within arms length of) the open dock.[38] On this point there appeared to be some development as the observation sessions continued. In the earlier sessions, witnesses were generally expected to give evidence this close to the defendant without any special consideration. As time went on, however, court legal advisers began suggesting various solutions to this problem, including having the defendant sit as far away as possible from the witness within the open dock or (more usually by the last of the observation sessions) having the defendant sit behind his lawyer for the duration of the witnesses' evidence. This latter solution did however present its own problems, as during cross-examination the witness would inevitably look at the defence laywer, and thus also the defendant sitting behind. Indeed, outside the courtroom several witnesses having given evidence were heard complaining that the defendant had been staring at them from behind the defence lawyer the whole time. In the Youth Courts at Courts A and B, witnesses would sit behind a desk at Court B and simply on a chair in the middle of the room at Court A.

In calling witnesses, lawyers and staff followed a fairly standardised procedure at all three courts. First, the witness would be led into the court and directed to stand in the witness box (or sit in the case of Youth Courts). Occasionally witnesses would sit

[38] The 'docks' used in most trials at Courts A and B were simply benches with no barrier between the defendant and the rest of the court.

immediately in the adult courts and were asked to stand. This was followed by the oath or affirmation, which the usher would administer and sometimes guide the witnesses through if they had problems with speech or literacy. In almost all cases the calling lawyer (prosecution or defence) would then introduce him/herself and then offer some explanation and 'pointers' to the witness. Usually these pointers would include asking witness to keep their voice up[39] and to face either the magistrates or the jury:

> "Even though it's going to be me asking the questions, they're the ones who have to hear what you're saying" (a crown prosecutor appearing at Courts A and B).

On this point, one solicitor advocate noted to me:

> "Witnesses are rubbish at looking at the bench, they just revert to type, you just look at the person you're talking to...it's not a worry, it's more of a courtesy" (a solicitor advocate appearing at Courts A and B).

Nevertheless, lawyers from both sides would often express their appreciation of the unusualness of this situation. In the magistrates' court witnesses would also usually be told that notes had to be taken by hand, meaning there was a need to proceed slowly and that the lawyer asking questions "might have to stop you occasionally". On this point, many lawyers would also offer the tip to witnesses to "watch the legal adviser's pen" so when he/she stopped writing the witness would know to continue speaking. It was at this point that magistrates would in most cases invite the witness to sit. At Court C, judges seemed more adverse to witnesses automatically sitting through their evidence, but nonetheless they would usually invite the witness to "speak up" if they wanted to sit or needed a break. Magistrates would also sometimes offer the witness the option of telling them when they needed a break before they began their evidence, although it was more common at Courts A and B for the issue to be ignored at this stage and for breaks to be offered later (by the bench) during the evidence if it transpired that the questioning was unusually long or challenging.

A slightly different procedure was followed at the magistrates' courts when witnesses (usually children) gave evidence via live video-link. In these cases the witness would be already sitting in the video-link room when the equipment was activated. In most cases

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[39] On this issue, on a couple of occasions in the Crown Court, witnesses became confused by a device resembling a microphone built into the witness box. The device was intended for use with the court's hearing aid loop system but did not in fact amplify the voice. The witnesses therefore had to be advised against speaking into the object.

the court legal adviser – who was always in charge of running the equipment – would then speak to the witness first, introducing himself then switching the witnesses' view to introduce one by one the prosecutor, defence lawyer and magistrates. When a district judge was sitting, the bench would usually take responsibility for 'hosting' these introductions and speaking to the witness first, and also giving the witness similar advice about speaking slowly and keeping their voice up.

On this point, the video-link equipment at all three courts was usually sufficient to allow witnesses to be easily seen and heard in the courtroom and apparently for the witness to hear questions easily and see the lawyers. Nevertheless, achieving this often required a degree of trial and error at the start of the evidence-giving process, whereby witnesses would be asked to move microphones closer to themselves when they were coming through too quietly, or push them further away when there was feedback. Indeed, whilst most witnesses could be heard easily, loud feedback was a recurring problem with the video-link equipment at Court B especially, where the equipment was ironically more modern than either of the other courts.[40]

At the Crown Court, video-link equipment and screens were permanent fixtures built into the courtroom. Consequently, the court clerks who were in charge of operating the equipment, rarely had any difficulty setting up or operating special measures. In the magistrates' courts, however, video-links had to be specially set up by court porters before the commencement of a trial.[41] At both magistrates' courts it would most commonly take legal advisers some time to (re)familiarise themselves with the equipment, which would often involve calling a porter into the court to get it working, or sometimes consulting with other legal advisers. Whilst these observations demonstrated some general trepidation with the equipment, it should be pointed out that little time was wasted in any trial by such activities and all legal advisers observed operating such equipment did so smoothly and effectively during the trials themselves. That said, the impression was that the knowledge of how to do this was passed on more through word of mouth from other legal advisers rather than any specific training. Indeed, at one point the court's porter at Court B joked that, if the legal advisers ever

[40] Although, one legal adviser at Court B suggested the court had gone for the "cheaper option", which we will see below was a general view held by many court workers at Courts A and B about the special measures equipment in general.

[41] Apart from in one courtroom at Court A, which was permanently set up with video-link equipment. This was usually used for video remands with prisons, but could also connect with the video-link rooms at the court.

started remembering how to use the video-link equipment, he would find himself out of work.[42]

In the case of screens, again at Court C these comprised of permanent curtains built around the witness box. At the magistrates' courts most courtrooms had a supply of portable screens that would usually be moved into position by a combination of the ushers, legal adviser, lawyers and (sometimes) myself. Generally the courtrooms were large enough to ensure this was not too cumbersome a task, although it did often provoke debate between parties as to exactly how screens should be positioned such that lawyers and magistrates could still see witnesses. Usually the solution was to put the screen close to the defendant, blocking his or her view of the witness and vice versa.

This need to organise the screens manually at Courts A and B of course reflects the practical difficulties of courts having to incorporate special measures when they were not originally designed with these in mind. This had been a particular challenge for the aging 1960s building at Court A, where former offices and consultation rooms had been converted into (prosecution) witness waiting rooms and video-link rooms. A problem often remarked upon by lawyers and magistrates at both Courts A and B was that the video monitors used for special measures were so large as to block the magistrates' view of the courtroom when they were in position on the bench. Magistrates openly complained about this at both courts on several occasions and it was clearly a source of distraction and cumbersome for them to stare around the monitors:

> "In this court if you do a trial in the Youth Court each magistrate has a screen in front of them – directly in front of them – and then there's another screen which looks out into the courtroom which everybody else watches. This is all very good, but you can't see a lot of people round the screen!...It's exasperating! If I go and sit in the Youth Court when we're not doing the video-link I try and manhandle the screen to try and see everyone in the court, probably break the thing!" (a district judge sitting at Court B).

Notably, the video-link equipment used in the Court A Youth Courts is the same type of equipment used in Court B's adult courts.

Indeed, chief administrators at both Courts A and B openly acknowledged the problem with the video-link equipment, arguing that it was done cheaply via a nationally imposed contract:

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[42] Although, again, setting up the equipment was not a common source of delay for most trials, see Appendix 4.

"The kit for the youth witnesses is awful, it is absolutely abysmal. I think it should be scrapped and you'd be embarrassed to see it. It's done on the cheap and it is awful" (the Clerk to the Justices at Court A).

"The [special measures] equipment is appalling...The equipment isn't as good as it could be...and that's as a result of the service provider given to us centrally. I've had some concerns expressed to me by some of the magistrates that some of it is so bad that they fear it's interfering with the judicial process in terms of the quality of the sound and all that kind of thing" (the District Legal Director at Court A).

As noted already, in most of the trials observed for this research – even in the Youth Courts mentioned in the above two extracts – by and large the video-link equipment did allow the witness to be seen and heard relatively clearly. There were, however, notable exceptions where feedback and low volumes made this difficult, especially if one were trying to make detailed notes on what was being said specifically, as magistrates, legal advisers and advocates must all do.

For the purposes of this research, observations were recorded concerning supporters being brought into the courtroom or video-link room by witnesses during their evidence, and the results are displayed on Table 20:

Table 20: Number and percentage of different kinds of witnesses bringing Witness Service volunteer (WSV) supporters or non Witness Service volunteer supporters into court during their evidence***

	Court A	Court B	Court C	Courts A and B	All courts (A, B and C)
Civilians* bringing non WSV supporters into court / video-link room**	46 (49%)	19 (21%)	6 (21%)	65 (35%)	71 (34%)
Civilians* bringing WSV supporters into court / video-link room**	22 (23%)	39 (43%)	5 (18%)	61 (33%)	66 (31%)
Civilian victims bringing non WSV supporters into court / video-link room	19 (44%)	12 (29%)	5 (28%)	31 (36%)	36 (35%)
Civilian victims bringing WSV supporters into court / video-link room	18 (42%)	22 (52%)	5 (28%)	40 (47%)	45 (44%)
Civilian non victims** bringing non WSV supporters into court / video-link room**	27 (53%)	7 (17%)	1 (6%)	34 (40%)	35 (34%)
Civilian non victims** bringing WSV supporters into court / video-link room**	4 (8%)	17 (35%)	0 (0%)	21 (21%)	21 (20%)
All police bringing non WSV supporters into court	0 (0%)	2 (10%)	0 (0%)	2 (<1%)	2 (<1%)
Defendants bringing non WSV supporters into court	15 (41%)	22 (58%)	0 (0%)	37 (49%)	37 (48%)
Total witnesses who brought non WSV into courtroom/video-link room***	61 (38%)	43 (29%)	6 (17%)	104 (34%)	110 (32%)
Total witnesses who brought WSV into courtroom/video-link room***	22 (23%)	39 (43%)	5 (18%)	61 (33%)	66 (31%)

Percentages are out of the total number of each type of witness observed at each court, for their numbers see Table 17 above.

****'Non Witness Service volunteer supporters' excludes court ushers.**

*****Including victims and experts but excluding defendants.**

******Including experts but excluding defendants.**

*******Including defendants.**

The broad conclusion to be drawn from this table is that the majority of victims and witnesses of all kinds are giving evidence with no specific supporters in the courtroom, whether these be friends and family or Witness Service volunteers. That said, the figures also indicate that having a supporter in court is now by no means a rare or unusual occurrence.

Table 20 also boasts some interesting characteristics. For example, it is notable between the magistrates' courts that a greater proportion of civilian witnesses came into the courtroom at Court A with a non Witness Service volunteer compared with Court B, where a volunteer supporter was more common than a friend or family member. It is clear from the table that Witness Service volunteers were more frequently brought into court by all categories of witnesses at Court B compared with Court A. This may reflect the generally more relaxed and pro-active attitude already mentioned which was exhibited towards the Witness Service by court staff and lawyers at Court B compared with Court A. As such, whilst overall the more popular option seems to be for witnesses to bring their own supporters into the courtroom (see in particular the 'all courts' percentages) this apparently does depend on the court.

It is also interesting to note that civilian *non*-victims were rarely supported by volunteers in the courtroom at Court A, whereas this was far more common at Court B. This might suggest that the Witness Service at Court A was concentrating much of its attention and support on victims themselves, whereas at Court B the Service considered their role more in terms of all (prosecution) witnesses. It is also worth pointing out that non-victim civilian witnesses in Court A appear to have 'compensated', with a higher proportion bringing *non*-volunteer supporters into the courtroom (53%).

In Court C, the data are based on a small number of witnesses, but the figures still suggest that supporting victims through volunteers accompanying them into the courtroom was more common than using them to support civilian witnesses who were not victims. Indeed, it is interesting in Court C to note that the highest proportions of any category of witness bringing volunteer or non-volunteer supporters into the courtroom is associated with civilian victims. This seems to suggest that bringing supporters into the courtroom at the Crown Court is something mainly done by victims giving evidence.

A point should be made here on the issue of support for victims giving evidence from a video-link room. Through speaking to court staff and Witness Service coordinators it became clear that the practice of allowing Witness Service or other supporters into the video-link room varies from court to court. At Court C, for example, the presiding judge took the view that Witness Service volunteers should not sit with witnesses in the video-link rooms; only a court usher was permitted to do so. At Courts A and B, however, both Witness Service and non-Service supporters were allowed to sit with the witness, along with an usher.

At all three courts, out of 34 witnesses observed giving all or part of their evidence through video-link[43], 11 did so with a Witness Service volunteer plus an usher in the video-link room, seven had a non-volunteer supporter plus an usher, 12 just had an usher and four appeared to be alone in the video-link room. It is therefore important to emphasise the key role played by court ushers – especially at the magistrates' courts – in supporting victims and witnesses giving evidence via live video-link. In practice ushers were also often responsible for conveying a great deal of information to witnesses before the start of the trial, and are one of the few sources of information available to defence witnesses.

Tables 21 and 22 provide data on the number of witnesses who were invited to sit down during the course of their evidence, and also the number who did in fact sit. As noted already, in almost all cases the witnesses were invited by the bench to be seated at the start of the evidence-giving process, although in the magistrates' court it was sometimes up to the court legal adviser or the lawyer calling the witness to remind the magistrates to do so. The tables clearly show that both inviting witnesses to sit and actually having witness sit down during evidence is now very common indeed. Clearly, however, this was not always the case at every court:

> "I never experienced that until I came here, I was shocked when [I moved to Court B] and a bench asked a witness to sit down" (a legal adviser at Court B).

The figures also indicate that the Crown Court may be lagging behind the magistrates' court in this respect.

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[43] For pre-recorded examination in chief clearly only the cross-examination was conducted live using this equipment.

Table 21: Number and percentage of different categories of witnesses who were invited to sit down to give evidence*

	Court A	Court B	Court C	Courts A and B	All courts (A, B and C)
Civilians (including victims and experts but not defendants)	83 (88%)	84 (93%)	18 (64%)	167 (91%)	185 (88%)
Police (including police victims)	19 (68%)	11 (55%)	3 (60%)	30 (63%)	33 (62%)
Civilian victims	37 (86%)	41 (98%)	12 (67%)	80 (94%)	92 (89%)
Civilian non victims (including experts but not defendants)	46 (90%)	41 (85%)	6 (75%)	87 (88%)	93 (87%)
Defendants	27 (73%)	36 (95%)	1 (50%)	63 (84%)	64 (83%)
All prosecution witnesses	81 (83%)	88 (85%)	21 (64%)	169 (84%)	190 (81%)
All defence witnesses	48 (79%)	43 (96%)	1 (50%)	91 (86%)	92 (85%)
Total witnesses (including defendants)	129 (81%)	131 (89%)	22 (63%)	260 (85%)	282 (82%)

***Percentages are out of the total number of each type of witness observed at each court, for their numbers see Table 17 above.**

Table 22: Number and percentage of different categories of witnesses who sat down to give evidence*

	Court A	Court B	Court C	Courts A and B	All courts (A, B and C)
Civilians (including victims and experts but not defendants)	86 (91%)	73 (81%)	16 (57%)	159 (86%)	175 (83%)
Police (including police victims)	4 (14%)	7 (35%)	0 (0%)	11 (23%)	11 (21%)
Civilian victims	40 (93%)	36 (86%)	11 (61%)	76 (89%)	87 (84%)
Civilian non victims (including experts but not defendants)	46 (90%)	37 (77%)	5 (63%)	83 (84%)	88 (82%)
Defendants	23 (62%)	28 (74%)	1 (50%)	51 (68%)	52 (68%)
All prosecution witnesses	68 (70%)	72 (70%)	16 (48%)	140 (70%)	156 (67%)
All defence witnesses	44 (72%)	36 (80%)	1 (50%)	80 (75%)	81 (75%)
Total witnesses (including defendants)	112 (70%)	108 (73%)	17 (49%)	220 (72%)	237 (69%)

***Percentages are out of the total number of each type of witness observed at each court, for their numbers see Table 17 above.**

The same conclusion can broadly be drawn on the issue of courts thanking witnesses for their time and effort after they have given evidence. From Table 23 it is clear that this has become a common occurrence, with the difference between the Crown Court and magistrates' courts in this instance being far less obvious. Indeed, a higher percentage of civilian victims were thanked in the Crown Court than either of the two magistrates' courts. The clearer distinction here is between prosecution and defence witnesses, where

the proportion of defence witnesses (especially defendants themselves) being thanked at all three courts was markedly lower than for prosecution witnesses or victims.

Table 23: Total number of witnesses who were thanked after their evidence*

	Court A	Court B	Court C	Courts A and B	All courts (A, B and C)
Civilians (including victims and experts but not defendants)	78 (83%)	69 (77%)	22 (79%)	147 (80%)	169 (80%)
Police (including police victims)	24 (86%)	16 (80%)	4 (80%)	40 (83%)	44 (83%)
Civilian victims	33 (77%)	35 (83%)	16 (89%)	68 (80%)	84 (82%)
Civilian non victims (including experts but not defendants)	44 (86%)	34 (71%)	5 (63%)	78 (79%)	83 (78%)
Defendants	9 (24%)	15 (39%)	1 (50%)	24 (32%)	25 (32%)
All prosecution witnesses	82 (84%)	79 (77%)	26 (79%)	161 (80%)	187 (80%)
All defence witnesses	29 (48%)	21 (47%)	1 (50%)	50 (47%)	51 (47%)
Total witnesses (including defendants)	111 (70%)	100 (68%)	27 (77%)	211 (69%)	238 (70%)

***Percentages are out of the total number of each type of witness observed at each court, for their numbers see Table 17 above.**

6.2.2 – The evidence-giving process

In terms of the evidence-giving process itself, Tables 24-26 provide details of the average length of questioning including and excluding any breaks afforded to the witness. Unsurprisingly, Table 24 indicates that civilian victims giving evidence at all three courts were on average kept answering questions longer than other witnesses during examination in chief, cross-examination, and overall. It is also interesting to note here the lack of any large differences between the average lengths of questioning with and without breaks throughout the table, even for civilian victims. This helps illustrate the point that – certainly in the magistrates' court – most victims in this study (and witnesses in general) gave all their evidence without a break, for an average of 52 minutes.

Table 24: Average length of questioning with and without breaks at Courts A, B and C*

	n**	Average length of questioning (HH:MM)		95% confidence intervals for average lengths (HH:MM)					
				Lower bound		Upper bound		Range	
		- breaks	+ breaks	- breaks	+ breaks	- breaks	+ breaks	- breaks	+ breaks
Civilian victims									
Examination in chief	100	00:24	00:26	00:20	00:21	00:28	00:32	00:08	00:11
Cross-examination	97	00:29	00:43	00:22	00:15	00:36	01:11	00:14	00:56
Total questioning	103	00:52	01:08	00:42	00:38	01:02	01:38	00:20	01:00
Defendants									
Examination in chief	77	00:13	00:14	00:11	00:12	00:15	00:16	00:04	00:04
Cross-examination	77	00:14	00:15	00:12	00:13	00:16	00:17	00:04	00:04
Total questioning	77	00:28	00:30	00:25	00:26	00:32	00:34	00:07	00:08
Police									
Examination in chief	50	00:11	00:11	00:09	00:09	00:14	00:14	00:05	00:05
Cross-examination	43	00:08	00:9	00:06	00:06	00:10	00:12	00:04	00:06
Total questioning	50	00:19	00:20	00:15	00:15	00:22	00:24	00:07	00:09
All civilians (excluding defendants and experts)									
Examination in chief	206	00:18	00:19	00:15	00:16	00:20	00:22	00:05	00:06
Cross-examination	195	00:20	00:28	00:16	00:14	00:24	00:42	00:08	00:28
Total questioning	209	00:38	00:46	00:32	00:31	00:43	01:01	00:11	00:15

*** Results are given which exclude any breaks afforded to the witness during the evidence-giving process (- breaks) and which include such breaks (+ breaks).**
****Excluding cases where an average length of questioning was not calculated. Refers to number of examinations in chief / cross-examinations rather than number of witnesses.**

A breakdown of these results between the magistrates' and Crown Court on Tables 25 and 26 reveals the expected finding that evidence generally takes longer at the Crown Court. More interesting, however, is the marked difference between the average lengths of cross-examination including and excluding breaks for victims specifically. This seems to indicate that victims in the Crown Court are being afforded significant breaks during this process, and more so than civilian witnesses in general.

Table 25: Average length of questioning with and without breaks at Courts A and B*

	n**	Average length of questioning (HH:MM)		95% confidence intervals for average lengths (HH:MM)					
				Lower bound		Upper bound		Range	
		- breaks	+ breaks	- breaks	+ breaks	- breaks	+ breaks	- breaks	+ breaks
Civilian victims									
Examination in chief	86	00:22	00:24	00:19	00:19	00:25	00:28	00:06	00:09
Cross-examination	82	00:25	00:27	00:21	00:23	00:29	00:31	00:08	00:07
Total questioning	86	00:47	00:50	00:41	00:43	00:53	00:57	00:12	00:14
Defendants									
Examination in chief	75	00:13	00:14	00:11	00:11	00:15	00:16	00:04	00:05
Cross-examination	75	00:14	00:15	00:12	00:12	00:16	00:17	00:04	00:05
Total questioning	75	00:28	00:29	00:25	00:25	00:31	00:33	00:06	00:08
Police									
Examination in chief	45	00:11	00:11	00:08	00:08	00:13	00:13	00:05	00:05
Cross-examination	39	00:09	00:10	00:06	00:06	00:11	00:13	00:05	00:07
Total questioning	45	00:19	00:20	00:15	00:15	00:23	00:24	00:08	00:09
All civilians (excluding defendants and experts)									
Examination in chief	184	00:17	00:18	00:15	00:15	00:19	00:20	00:04	00:05
Cross-examination	174	00:18	00:19	00:16	00:16	00:20	00:22	00:04	00:06
Total questioning	184	00:35	00:37	00:31	00:32	00:39	00:41	00:08	00:09

*** Results are given which exclude any breaks afforded to the witness during the evidence-giving process (- breaks) and which include such breaks (+ breaks).**
****Excluding cases where an average length of questioning was not calculated. Refers to number of examinations in chief / cross-examinations rather than number of witnesses.**

Table 26: Average length of questioning with and without breaks at Court C*

	n**	Average length of questioning (HH:MM)		95% confidence intervals for average lengths (HH:MM)					
				Lower bound		Upper bound		Range	
		- breaks	+ breaks	- breaks	+ breaks	- breaks	+ breaks	- breaks	+ breaks
Civilian victims									
Examination in chief	14	00:34	00:41	00:11	00:11	00:58	01:11	00:47	01:00
Cross-examination	15	00:48	02:14	00:06	-00:56	01:30	05:24	01:24	06:20
Total questioning	17	01:15	02:36	00:18	-00:32	02:12	05:45	01:54	06:17
Defendants									
Examination in chief	2	00:15	00:15	-00:49	-00:49	01:19	01:19	02:08	02:08
Cross-examination	2	00:25	00:25	-00:45	-00:45	01:34	01:34	02:19	02:19
Total questioning	2	00:42	00:42	00:29	00:29	00:55	00:55	00:26	00:26
Police									
Examination in chief	5	00:16	00:16	-00:03	-00:03	00:35	00:35	00:38	00:38
Cross-examination	4	00:03	00:03	-00:01	-00:01	00:07	00:07	00:08	00:08
Total questioning	5	00:19	00:19	00:03	00:03	00:41	00:41	00:38	00:38
All civilians (excluding defendants and experts)									
Examination in chief	22	00:25	00:30	00:10	00:10	00:41	00:49	00:31	00:39
Cross-examination	21	00:38	01:39	00:08	-00:34	01:09	03:53	00:61	04:27
Total questioning	25	00:58	01:53	00:18	-00:14	01:37	03:59	01:19	04:13

*** Results are given which exclude any breaks afforded to the witness during the evidence-giving process (- breaks) and which include such breaks (+ breaks).**
****Excluding cases where an average length of questioning was not calculated. Refers to number of examinations in chief / cross-examinations rather than number of witnesses.**

We can now move on to the actual contribution made by witnesses to the proceedings during evidence. Tables 27 to 29 display the results of timing witness' speech during the evidence-giving process and then calculating what percentage of examinations in chief and cross-examinations the witnesses actually spoke for. The remarkable thing about Table 27 is how similar the resulting percentages are for each category of witness. We know that existing literature indicates that advocates exercise a great deal of control over the evidence-giving process (Luchjenbroers, 1996). These figures seem to suggest that lawyers on both sides go about this process in a standard way, regardless of whom the questions are directed at.[44] The importance of this finding for the present study is, firstly, that it means victims are not contributing in any more significant way to the process than any other person giving evidence and, secondly, that they are not being treated in any 'special' way by criminal justice practitioners. Both these factors seem to detract from the notion that victims are being brought 'to the heart' of the trial process, in direct contrast to the suggestion made in the last chapter that the accounts made by victims should be given a special place in any victim-centred system.

[44] Wright (2004) produced comparable findings in relation to solicitors' interviewing style.

Table 27: Average percentage of time speaking during different components of evidence at Courts A, B and C (percentage of *component*)

	n*	Average percentage of time speaking**	95% confidence intervals for average percentages**		
			Lower bound	Upper bound	Range
Civilian victims					
Examination in chief	100	37	34	40	6
Cross-examination	108	27	25	30	5
Examination in chief and cross-examination	208	32	30	34	4
Defendants					
Examination in chief	78	37	34	39	5
Cross-examination	80	29	27	31	4
Examination in chief and cross-examination	158	33	31	34	3
Police					
Examination in chief	47	37	33	41	8
Cross-examination	38	29	25	33	8
Examination in chief and cross-examination	85	33	30	36	6
All civilians (excluding experts, including defendants)					
Examination in chief	279	37	35	38	3
Cross-examination	285	28	27	30	3
Examination in chief and cross-examination	564	32	31	34	3

***Excludes cases where no percentage was calculated. Refers to number of examinations in chief / cross-examinations rather than number of witnesses.**
****Percentage of *component of* evidence spent talking.**

Once again, splitting the results down into the two magistrates' courts and one Crown Court does little to dispel these findings, albeit giving a general indication that at the Crown Court the percentage contribution of victims and all civilian witnesses to evidence is generally slightly higher than for police witnesses or defendants: .

Table 28: Average percentage of time speaking during different components of evidence at Courts A and B (percentage of *component*)

	n*	Average percentage of time speaking**	95% confidence intervals for average percentages**		
			Lower bound	Upper bound	Range
Civilian victims					
Examination in chief	85	36	33	39	6
Cross-examination	88	27	25	30	5
Examination in chief and cross-examination	173	32	30	34	4
Defendants					
Examination in chief	74	36	33	39	6
Cross-examination	76	29	27	31	4
Examination in chief and cross-examination	150	33	31	34	3
Police					
Examination in chief	42	37	33	41	8
Cross-examination	34	30	26	34	8
Examination in chief and cross-examination	76	34	31	37	6
All civilians (excluding experts, including defendants)					
Examination in chief	254	36	35	38	3
Cross-examination	256	28	27	30	3
Examination in chief and cross-examination	510	32	31	33	2

***Excludes cases where no percentage was calculated. Refers to number of examinations in chief / cross-examinations rather than number of witnesses.**

****Percentage of *component of* evidence spent talking.**

Table 29: Average percentage of time speaking during different components of evidence at Court C (percentage of *component*)

	n*	Average percentage of time speaking**	95% confidence intervals for average percentages**		
			Lower bound	Upper bound	Range
Civilian victims					
Examination in chief	15	43	33	54	21
Cross-examination	20	26	19	33	14
Examination in chief and cross-examination	35	34	27	40	13
Defendants					
Examination in chief	2	39	-37	115	152
Cross-examination	3	25	15	36	21
Examination in chief and cross-examination	5	31	20	42	22
Police					
Examination in chief	5	37	12	61	49
Cross-examination	4	14	2	26	24
Examination in chief and cross-examination	9	27	12	41	29
All civilians (excluding experts, including defendants)					
Examination in chief	24	44	37	50	13
Cross-examination	30	26	21	31	10
Examination in chief and cross-examination	54	34	29	38	9

***Excludes cases where no percentage was calculated. Refers to number of examinations in chief / cross-examinations rather than number of witnesses.**
****Percentage of *component of* evidence spent talking.**

Of particular interest to the present study is the question of whether or not the presence of special measures assists victims and other witnesses to give evidence. Tables 30-32 give timing figures like those above just for victims and other civilians who used special measures to give evidence. Initial comparisons between these results and those on Tables 27-29 seem to indicate that the advent of special measures did not impact a great deal on the percentage a witness spoke during the different components of the process:

Table 30: Average percentage of time speaking during different components of evidence with special measures at Courts A, B and C (percentage of *component*)

	n*	Average percentage of time speaking**	95% confidence intervals for average percentages**		
			Lower bound	Upper bound	Range
Civilian victims					
Examination in chief	26	40	33	47	14
Cross-examination	31	24	21	28	7
Examination in chief and cross-examination	57	31	27	36	9
All civilians* **					
Examination in chief	37	37	32	42	10
Cross-examination	44	23	21	26	5
Examination in chief and cross-examination	81	30	26	33	7

***Excludes cases where no percentage was calculated. Refers to number of examinations in chief / cross-examinations rather than number of witnesses.**
****Percentage of *component of* evidence spent talking.**
*****No experts gave evidence through special measures and defendants are unable to under the 1999 Act.**

Table 31: Average percentage of time speaking during different components of evidence with special measures at Courts A and B (percentage of *component*)

	n*	Average percentage of time speaking**	95% confidence intervals for average percentages**		
			Lower bound	Upper bound	Range
Civilian victims					
Examination in chief	21	37	31	44	13
Cross-examination	22	25	21	29	8
Examination in chief and cross-examination	43	31	27	35	8
All civilians* **					
Examination in chief	30	34	29	40	11
Cross-examination	34	23	20	27	7
Examination in chief and cross-examination	64	29	25	32	7

***Excludes cases where no percentage was calculated. Refers to number of examinations in chief / cross-examinations rather than number of witnesses.**
****Percentage of *component of* evidence spent talking.**
*****No experts gave evidence through special measures and defendants are unable to under the 1999 Act.**

Table 32: Average percentage of time speaking during different components of evidence with special measures at Court C (percentage of *component*)

	n*	Average percentage of time speaking**	95% confidence intervals for average percentages**		
			Lower bound	Upper bound	Range
Civilian victims					
Examination in chief	5	51	22	81	59
Cross-examination	9	23	12	33	21
Examination in chief and cross-examination	14	33	20	46	26
All civilians* **					
Examination in chief	7	49	30	67	37
Cross-examination	10	24	14	33	19
Examination in chief and cross-examination	17	34	24	44	20

***Excludes cases where no percentage was calculated. Refers to number of examinations in chief / cross-examinations rather than number of witnesses.**
****Percentage of *component of* evidence spent talking.**
*****No experts gave evidence through special measures and defendants are unable to under the 1999 Act.**

Employing T-test analysis – with the percentage of time speaking during the different components of evidence as the test variable and the presence or absence of special measures as the grouping variable – generally confirms that for most classes of witness at all three courts there was no statistically significant difference between the average percentages of time spoken with or without special measures. The exception to this was with cross-examination of civilian witnesses at all three courts taken together (t=3.010, df=283, p=0.003) and just at the magistrates' court (t=2.886, df=254, p=0.004):

Table 33: T-Test comparison of mean percentage of time speaking by civilians during cross-examination with and without special measures at Courts A, B and C

	Mean % of time speaking during cross-examination	Standard Deviation	n
Civilians cross-examined at Courts A, B and C *with* special measures	23%	9.99	44
Civilians cross-examined at Courts A, B and C *without* special measures*	29%	11.27	241

***No experts gave evidence through special measures and defendants are unable to under the 1999 Act.**

Table 34: T-Test comparison of mean percentage of time speaking by civilians during cross-examination with and without special measures at Courts A and B

	Mean % of time speaking during cross-examination	Standard Deviation	n
Civilians cross-examined at Courts A and B *with* special measures	23%	9.11	34
Civilians cross-Examined at Courts A and B *without* special measures*	29%	11.08	222

***No experts gave evidence through special measures and defendants are unable to under the 1999 Act.**

Interestingly, these tables seem to suggest that the presence of special measures for these witnesses actually led to them speaking for a slightly lower proportion of the time, at all three courts and just at the magistrates', compared with witnesses who did not give evidence through special measures. This may indicate that special measures as a whole do not offer any guarantee that witnesses will be able to express themselves more easily during evidence.

Nevertheless, comparison of the means did reveal more significant differences between the percentage of time victims and civilian witnesses spoke with and without pre-recorded examination in chief specifically and these results are set out on Tables 35 and 36.

Table 35: T-Test comparison of mean percentage of time speaking by civilian victims during examination in chief with and without pre-recorded evidence at Courts A, B and C

	Mean % of time speaking during cross-examination	Standard Deviation	n
Civilian victims giving evidence during examination in chief with pre-recorded evidence at Courts A, B and C	50%	16.538	14
Civilian victims giving evidence during examination in chief with special measures *other than* pre recorded evidence or *without* special measures at Courts A, B and C*	35%	12.321	87

***No experts gave evidence through special measures and defendants are unable to under the 1999 Act.**

Table 36: T-Test comparison of mean percentage of time speaking by civilians during examination in chief with and without pre-recorded evidence at Courts A and B

	Mean % of time speaking during cross-examination	Standard Deviation	n
All civilians giving evidence during examination in chief with pre-recorded evidence at Courts A, B and C	32%	15.722	20
All civilians giving evidence during examination in chief with special measures other than pre-recorded evidence or without special measures at Courts A, B and C*	20%	12.421	544

***No experts gave evidence through special measures and defendants are unable to under the 1999 Act.**

On the face of it, comparison of the means on Tables 35 and 36 indicate a 15% average increase in the time speaking whilst giving evidence with pre-recorded examination in chief for civilian victims ($t=-3.937$, $df=99$, $p<0.000$) and a 12% increase for civilians in general ($t=-4.915$, $df=562$, $p<0.000$). Coupled with first-hand observation of this process, I would conclude that pre-recorded examination in chief does increase the percentage of time a witness speaks during evidence to a more significant degree than special measures in general. This is probably because evidence through live links or behind screens remains very similar in content and style to traditional questioning. The advent of a 'free narrative phase' during pre-recorded examination in chief, on the other hand (see Chapter 3) is probably the most significant break with traditional questioning procedures yet seen, and the closest to true account-making. Clearly though, this is still in place for only a minority of (child) witnesses.

Another advantage of acquiring figures for the length of time witnesses spoke during evidence is that we can then compare these to the length of trials and thereby calculate victim and witnesses' verbal contributions to the whole procedure:

Table 37: Average percentage of time different witnesses spoke during the whole trial at Courts A, B and C (all witnesses)

	n*	Average percentage of time speaking in whole trial**	95% confidence intervals for average percentages**		
			Lower bound	Upper bound	Range
Civilian victims	103	5	4	6	2
Defendants	73	4	4	5	1
Police	42	5	2	8	6
All civilians***	245	4	4	4	0

*Excludes cases where no percentage was calculated and/or the eventual length of the trial was unknown.
**Percentage of *component* of evidence spent talking.
***Excluding experts, including defendants.

Table 38: Average percentage of time witnesses who gave evidence spoke through special measures during the whole trial at Court C

	n*	Average percentage of time speaking in whole trial**	95% Confidence intervals for average percentages**		
			Lower bound	Upper bound	Range
Civilian victims	15	5	3	7	4
All civilians***	24	5	3	6	3

*Excludes cases where no percentage was calculated and/or the eventual length of the trial was unknown.
**Percentage of *component* of evidence spent talking.
***Excluding experts, including defendants.

Again, the similarity of the averages across different kinds of witnesses confirms that victims do not seem to be given a 'special' place in these proceedings in terms of their oral contribution, and that the provision of special measures as a whole does not affect this.

In most cases the degree of control a questioning lawyer, court legal advisers in the magistrates' courts, and the bench has over the evidence-giving process was underlined by the prevalence of interruptions endured by many witnesses during the observed sessions, which are mapped out on Table 39:

Table 39: Number and percentage of witnesses interrupted during different parts of evidence, Courts A, B and C*

	Examination in chief	Cross-examination	Examination in chief and cross-examination
Civilians (including victims and experts but excluding defendants)	153 (72%)	58 (27%)	161 (76%)
Police (including police victims)	25 (49%)	6 (12%)	26 (51%)
Civilian victims	82 (79%)	34 (33%)	85 (82%)
Civilian non victims (including experts but excluding defendants)	71 (65%)	24 (22%)	76 (70%)
Defendants	55 (71%)	26 (34%)	56 (73%)
All prosecution witnesses	78 (33%)	63 (27%)	167 (71%)
All defence witnesses	66 (61%)	27 (25%)	76 (70%)
Total witnesses (including experts and defendants)	222 (65%)	90 (26%)	243 (71%)

***Percentages are out of the total number of each type of witness observed, for their numbers see Table 17 above.**

An 'interruption' was counted here in any instance when a questioning lawyer during examination in chief or cross-examination asked a question or made a statement before the witness had completed something they were saying. In other words, any instances in which the lawyer cut the witness short.

It is telling that civilian victims are interrupted more often than all other categories of witness during the whole evidential process and examination in chief specifically, whereas they were second (by 1%) only to defendants for cross-examination. This again seems to cast doubt on the view that victims are yet being given any kind of special consideration during the questioning process. On a wider point, it is interesting to note that interruptions during examination in chief were more common than interruptions during cross-examination throughout. This may seem peculiar given that cross-examination is when witnesses are having their evidence challenged, whereas examination in chief is the closest witnesses come to telling their version of the story. Ironically then it is this component – where victims and witnesses are expecting to present their accounts – where they find themselves interrupted. From observations, the explanation for this seemed to lie in the style and tactics of cross-examination verses examination in chief. During examination in chief, lawyers had to be very specific about eliciting the information they wanted, usually that which was recorded in the witness statement. During cross-examination, however, many lawyers seemed to employ a

strategy of allowing witnesses to speak more in the hope that they would say something contradictory to their previous evidence.

On Table 40 we see that the most common reason in both examination in chief and cross-examination for witnesses being interrupted whilst giving evidence was the questioning lawyer asking another question (48% of witnesses). This was also true of cross-examination alone (22%). During examination in chief, however, pausing for lawyers and court staff to take notes was the most common reason for witnesses being interrupted, with 45% of all witnesses interrupted during examination in chief for this reason[45], dropping to just 2% during cross-examination. This again suggests that in fact it is the examination in chief aspect of the questioning rather than cross-examination that is most restrictive for witnesses.

[45] In practice, although it was not expressed overtly, most of the 16 occasions on which witnesses were asked to 'slow down' were also to allow time for noting.

Table 40: Number of witnesses interrupted for specific reasons during different parts of evidence at Courts A, B and C (all witnesses)*

	Examination in chief	Cross-examination	Examination in chief and cross-examination
Asked another question	88 (26%)	75 (22%)	163 (48%)
Paused for notes	153 (45%)	6 (2%)	159 (47%)
Stopped from giving hearsay	25 (7%)	16 (5%)	41 (12%)
Stopped from giving 'excessive' information	13 (4%)	8 (2%)	21 (6%)
Asked to slow down	16 (5%)	1 (<1%)	17 (5%)
Asked to speak up	13 (4%)	2 (1%)	15 (4%)
Stopped from referring to previous victimisation at the hands of defendant, or to defendant's previous crimes generally[46]	8 (2%)	2 (1%)	10 (3%)
Asked to repeat something	8 (2%)	1 (<1%)	9 (3%)
Paused for translation	5 (1%)	1 (<1%)	6 (2%)
Lawyer clarifies witness' answer	8 (2%)	0 (0%)	8 (2%)
Legal or procedural point raised	1 (<1%)	2 (1%)	3 (1%)
Witness asked to let the lawyer ask a question before interrupting with an answer, i.e. told to listen to the lawyer's questions	0 (0)	2 (1%)	2 (1%)
Asked to take things 'in stages'	2 (1%)	1 (<1%)	3 (1%)
Asked to face the bench	2 (1%)	1 (<1%)	3 (1%)
Witness is stopped talking because non-questioning lawyer makes an objection to something said.	0 (0%)	1 (<1%)	1 (<1%)
Non-questioning lawyer thinks it is impossible for the witness to answer a question	0 (0%)	1 (<1%)	1 (<1%)
Witness interrupts lawyer and lawyer interrupts back	0 (0%)	1 (<1%)	1 (<1%)
Witness gives information 'out of order' and lawyer says "we'll get to that"	0 (0%)	1 (<1%)	1 (<1%)
Witness is asked to judge a distance using the room	0 (0%)	1 (<1%)	1 (<1%)
Static over microphone	1 (<1%)	0 (0%)	1 (<1%)
Witness is stopped from saying "I believe", lawyer wants him to say what he *knows*	1 (<1%)	0 (0%)	1 (<1%)
Bench chastises lawyer for inappropriate question	1 (<1%)	0 (0%)	1 (<1%)

***The percentages here are of *all* witnesses giving evidence (n=342).**

The large difference in the 'pause for notes' figures between the two main components of evidence can be explained by the fact that during examination in chief considerably more notes have to be taken. This is especially true in the magistrates' court, where the court legal adviser, the opposing lawyer and – of course – the magistrates must all take

[46] On one particular occasion, the first words out of a victim witnesses' mouth were that the defendant had been in prison previously. In this case the trial was halted and restarted with a new bench of magistrates, the victim being told that such points had to be kept to herself. From an account-making perspective of course this was a forced exclusion of what to the victim was a very important component of the story.

notes of what is being said by hand, because it represents the witness' main evidence. During cross-examination, it is mainly just reactions to challenges and inconsistencies with the proceeding evidence that must be noted. In the Crown Court there is a professional stenographer, meaning that noting the evidence is rarely an issue of concern, and this never prompted an interruption during the course of these observations.

Arguably of course, both of these main sources of interruption – asking another question and pausing a witness for notes – are avoidable. Clearly the occupational culture of advocates is presently such that it is deemed appropriate to interrupt witnesses with fresh questions[47], avoiding which would be a matter of training and spreading alternative 'good practice' similar to that under the 'free narrative phase' of pre-recorded examination in chief, where guidelines suggest witnesses should not be interrupted (Home Office, 2001a). Noting in the magistrates' court is more of a practical issue, as lawyers presently prefer written transcripts/notes to allow for later annotation or quick reference. Nevertheless, it is arguable that this is actually another cultural barrier – and one particularly applicable to the legal community in general with regard to the law's traditional reliance on written documents – and thus it would be interesting to pilot the use of recording a witnesses' evidence electronically.

Table 41 lays out how civilian victims specifically are interrupted during the evidence-giving process. Again, the same broad pattern emerges whereby asking another question and pausing the victim to take notes are prominent. It is however notable that the percentage of victims interrupted this way is generally higher than for witnesses in general. Also of note is the greater prevalence of interruptions to stop hearsay and 'excessive' information. This again demonstrates the limits placed on the accounts of victims as described in Chapter 5:

[47] Lawyers were occasionally asked by benches to allow witnesses to answer questions before asking new ones, but this was very much the exception rather than the rule.

Table 41: Number of civilian victims interrupted for specific reasons during different parts of evidence at Courts A, B and C*

	Examination in chief	Cross-examination	Examination in chief and cross-examination
Asked another question	32 (31%)	28 (27%)	60 (58%)
Paused for notes	54 (52%)	2 (2%)	56 (54%)
Stopped from giving hearsay	20 (19%)	7 (7%)	27 (26%)
Stopped from giving 'excessive' information	9 (9%)	6 (6%)	15 (14%)
Asked to slow down	4 (4%)	0 (0%)	4 (4%)
Asked to speak up	5 (5%)	1 (1%)	6 (6%)
Stopped from referring to previous victimisation at the hands of defendant, or to defendant's previous crimes generally	5 (5%)	2 (2%)	7 (7%)
Asked to repeat something	1 (1%)	0 (0%)	1 (1%)
Paused for translation	1 (1%)	0 (0%)	1 (1%)
Lawyer clarifies witness' answer	3 (3%)	0 (0%)	3 (3%)
Legal or procedural point raised	0 (0%)	0 (0%)	0 (0%)
Witness asked to let the lawyer ask a question before interrupting with an answer, i.e. told to listen to the lawyer's questions	0 (0%)	1 (1%)	1 (1%)
Asked to take things 'in stages'	1 (1%)	1 (1%)	2 (2%)
Asked to face the bench	0 (0%)	1 (1%)	1 (1%)
Witness is stopped talking because non-questioning lawyer makes an objection to something said.	0 (0%)	0 (0%)	0 (0%)
Non-questioning lawyer thinks it is impossible for the witness to answer a question	0 (0%)	1 (1%)	1 (1%)
Witness interrupts lawyer and lawyer interrupts back	0 (0%)	1 (1%)	1 (1%)
Witness gives information 'out of order' and lawyer says "we'll get to that"	0 (0%)	1 (1%)	1 (1%)
Witness is asked to judge a distance using the room	0 (0%)	0 (0%)	0 (0%)
Static over microphone	1 (1%)	0 (0%)	1 (1%)
Witness is stopped from saying "I believe", lawyer wants him to say what he *knows*	1 (1%)	0 (0%)	1 (1%)
Bench chastises lawyer for inappropriate question	1 (1%)	0 (0%)	1 (1%)

***The percentages here are of *all* civilian victims giving evidence (n=103).**

By comparing the number of times each witness was interrupted with the length of time their questioning took, it was possible to calculate an average rate of interruptions per minute for different kinds of witnesses. Here the point to be noted is again not so much the rates themselves, but rather the similarity of the figures for different kinds of witnesses, again suggesting victims are not being given a particularly 'special' place in the process and that lawyers ask questions of all witnesses in a standardised manner:

Table 42: Average number of interruptions per minute of different sections of evidence at Courts A, B and C

	n*	Average interruptions per min**	95% confidence intervals for average interruptions per minute**		
			Lower bound	Upper bound	Range
Civilian victims					
Examination in chief	81	0.21	0.17	0.24	0.07
Cross-examination	33	0.20	0.08	0.33	0.25
Examination in chief and cross-examination	85	0.14	0.12	0.18	0.06
Defendants					
Examination in chief	44	0.23	0.18	0.29	0.11
Cross-examination	26	0.16	0.10	0.23	0.13
Examination in chief and cross-examination	56	0.13	0.10	0.17	0.07
Police					
Examination in chief	25	0.22	0.15	0.30	0.15
Cross-examination	6	0.12	0.07	0.17	0.10
Examination in chief and cross-examination	26	0.14	0.10	0.18	0.08
All civilians (including experts but excluding defendants)					
Examination in chief	152	0.22	0.20	0.25	0.05
Cross-examination	57	0.22	0.13	0.31	0.18
Examination in chief and cross-examination	161	0.16	0.13	0.18	0.05

***Excludes cases where no interruptions per minute figure could be calculated. Refers to number of examinations in chief / cross-examinations rather than number of witnesses.**
****Rounded to nearest whole minute.**

The results are therefore fairly clear on the point that lawyers still tend to dominate and control the evidence-giving process. Information was also collected on the style and hostility of questioning, albeit based on the researcher's own assessment as to the degree of hostility on display rated on a 6-point Likert scale:

Table 43: Percentage of witnesses experiencing different levels of hostility during different parts of their evidence at Courts A, B and C

	n*	Percentage of witnesses experiencing different level of hostility					
		1	2	3	4	5	6
		Not hostile	A little hostile (formal)	To some extent hostile	Quite hostile	Very hostile	Extremely hostile
Civilian victims							
Examination in chief	105	20	78	1	0	1	0
Cross-examination	118	14	22	28	24	10	2
Defendants							
Examination in chief	77	3	92	5	0	0	0
Cross-examination	80	3	1	19	48	25	5
Police							
Examination in chief	51	2	98	0	0	0	0
Cross-examination	49	12	47	33	6	2	0
All civilians (including experts but excluding defendants)							
Examination in chief	287	10	87	2	<1	<1	0
Cross-examination	307	8	28	36	21	6	1

***Refers to number of examinations in chief / cross-examinations rather than number of witnesses.**

For each component of evidence observed, the 'hostility' of the questioning lawyers was rated on a scale from 1 (not hostile) to 6 (very hostile). A rating of '2' was usually used to designate questioning that perhaps was not so much 'hostile' as clearly formal. It is clear from Table 43 that – in most cases – lawyers did not question witnesses in a particularly hostile manner. The vast majority of examinations in chief were therefore rated 'a little hostile' or 'formal'. Perhaps unsurprisingly, we see more hostile cross-examinations in the case of defendants. There are also clear indications that civilians in general and victims of crime specifically faced slightly less hostile questioning than defendants. There was, however, little indication that victims were being questioned with less hostility than civilian witnesses as a whole.

Of course, one issue that could not be adequately explored in a relatively short-term period of observation was the question of whether lawyers had adapted their style of questioning over time to better account for the needs and perspective of the crime victim. This was a key issue raised with interview respondents, especially those who had been working in the criminal justice system for some time. Initially, however, many interviewees had difficulty answering this question. Frequently I was told that that the

approach taken by advocates to questioning witnesses was very much down to each individual's 'style' of advocacy:

> "Some [barristers] are good at picking up on little points, some are good at conveying little points – that become big points – and some are not. Some are more aware of life – shall we say – some are more men or women of the street, it's difficult to say" (a court clerk at Court C).

One distinction agreed upon by several respondents (to a given extent) was that between older and younger lawyers, especially barristers. Generally speaking (although even on this point many respondents were loathe to generalise) older barristers and defence solicitors were viewed as more willing to be confrontational with witnesses:

> "That comes down to the individual personalities [of barristers]...I would say that of some of the newer, young barristers there is a smaller percentage of those that will attack witnesses in the witness box. I have noticed – now compared to 12 years ago – you do get less intimidation and twisting of arms of witnesses when they're in the box than you did twelve years ago, but it seems to be with the newer barristers...I can't say that I've noticed with any of the 'old school' barristers that there's been any noticeable change between now and twelve years ago in the way they treat witnesses" (a court clerk at Court C).

This view would tally with general theories of occupational culture, that the 'old school' in any given profession will be less mindful to change their practices in the face of new priorities – like victim and witness care – whereas young members of a profession will develop practices from the outset with a mind to such issues.

One legal adviser saw the perceived change between older and younger advocates as representing changes of emphasis in their training over time:

> "You can get by more [now] on legal knowledge rather than really good advocacy skills, whereas before if you were a really good advocate and could put a witness down then you were seen perhaps as a good advocate, whereas now I don't think that's the perception so much...I'd say barristers across the board are more 'softly softly' with their approach and probably that's to do with their better evidential knowledge" (a legal adviser [originally trained as a barrister] at Court B).

Several practitioners lamented the changes over time, particularly what they viewed as a decline in the quality of cross-examination displayed by younger barristers, and younger solicitors in particular:

> "The younger generation of lawyers, I don't think – particularly the solicitors – I don't think cross-examination skills are as keen as they used to be, I think

sometimes witnesses aren't put under the sort of pressure they should be" (a legal adviser at Court B).

"By and large the cross-examination is less robust" (a district judge sitting at Court A).

"Cross-examination of witnesses has deteriorated significantly, it's shocking, it's not cross-examination...they [advocates] go through the entire evidence given by the defendant bit by bit and then say 'I suggest it didn't happen like that'. There is no attempt to directly analyse [the evidence]" (a district judge sitting at Court B).

In this last quotation, the district judge was referring to the tendency of many (especially younger) advocates to take the witness back through their evidence during cross-examination in a very long and drawn out manner, rather than sticking to the points of contention. Certainly this style of cross-examination was noted frequently in the observation sessions. Whilst the clear implication here was that this is a negative development because it puts the witness under less pressure, we can also note that, because it takes so much longer than more traditional cross-examination styles, this brings no advantage to the witness. That said, this particular judge believed witnesses were on balance being treated less harshly in recent years:

"There's a bit more deference towards witnesses" (ibid).

In addition, some lawyers made the point that – given the adversarial nature of the system – it was important that the process did not become "too easy" for victims and witnesses:

"I don't things should be too fluffy...I don't like intimidating, because it does smack of probably not properly respecting human rights, but certainly it should be formal" (the Clerk to the Justices at Court B).

This view of course reflects the findings above that most lawyers question witnesses in a 'formal' way. Indeed, one solicitor advocate noted that harsher forms of cross-examination could sometimes actually benefit witnesses in prompting them to "come out of their shells":

"Sometimes you can have a vigorous cross-examination, which winds the victim up such that they actually strengthen their resolve and give better evidence" (a solicitor advocate appearing at Courts A and B).

This view did seem to be confirmed (at least anecdotally) in some observation sessions, where witnesses appeared extremely confident following fairly hostile questioning, if only because they felt compelled to prove the questioning lawyer 'wrong'. On the other hand, it was noted several times by interviewees that the "best" lawyers don't need to take a hostile tone to elicit evidence from witnesses:

> "If a barrister is good at his job then he could probably elicit the information without using that sort of attack" (a court clerk at Court A).

In questioning one barrister, I asked how he decided on the style of questioning he was going to employ with witnesses, and it became clear that in his view this very much depended on the individual witnesses themselves:

> "It's all very complicated, because no two witnesses are the same...often you can gauge a lot by how they take the oath" (a barrister appearing at Courts A, B and C).

Hence, for this barrister each new witness necessitated a careful (and speedy) assessment exercise to determine factors like how confident the person was, how intimidated, how intelligent they were and so on, and this would affect how he asked questions both in terms of examination in chief and cross-examination. Of course, this view actually contradicts the previous findings given above – particularly regarding the percentage of time different witness speak – which suggest that by and large lawyers are asking questions in a very standardised way for all witnesses.

Given the adversarial nature of the system, it is clearly a questioning lawyer's role during cross-examination to test a witness's evidence. As such, data were recorded as to the manner in which lawyers would indicate to witnesses that their evidence might be untrue. Essentially lawyers went about this in three main ways; suggesting or implying the witness was "mistaken", more openly confessing the belief that witnesses were "misleading" the court, and directly labelling witnesses as liars. The use of these three strategies is displayed on the table below:

Table 44: Percentage of witnesses being told (or having it strongly implied) that they were 'mistaken', 'misleading' the court or 'lying' at Courts A, B and C*

	n**	Percentage of witnesses experiencing different strategies of evidential testing during cross-examination**, ***			
		No strategy used	Mistaken	Misleading the court	Lying
Civilian victims	118	12	26	56	6
Defendants	80	18	8	71	4
Police	49	71	14	8	0
All civilians (including experts but excluding defendants)	307	23	20	52	5

*** Percentages are of cross-examinations.**
****Refers to number of cross-examinations for which this data was collected rather than number of witnesses.**
*****Multiple answers were allowed here, as many lawyers would begin with one strategy then move on to another, especially if it was not having the desired effect.**

These results indicate that victims of crime are most commonly subject to the 'misleading strategy', more commonly than civilian witnesses in general, more of whom had no such strategy applied to them at all. This of course probably reflects the fact that the victim's evidence is often key, and therefore defence advocates will be more inclined to test it forcefully. As with the hostility results, this table again seems to indicate broadly that defendants are treated more harshly in this regard than victims or civilians in general. Of course, in viewing these results it is important to emphasise that even when a lawyer was using the 'mistaken strategy' – the implication was often that the witness was in fact lying. One barrister interviewed for this project expressed his views on calling witnesses 'liars' in the following terms:

> "You have to decide how to approach that witness, are they mistaken? Are they unreliable because they're mistaken? Or are they just an outright liar? It's a question of style as to how you put that...my style is and my theory is, they're mistaken as often as they can be, it's a last resort to call someone a liar unless it's called for, often it is...You will very rarely get very far calling a police officer a liar, it's happened once or twice to me, and it was called for...but even then it wasn't 'you're a liar aren't you?', it was skirting round the inevitable. More often than not people are 'mistaken' rather than liars, but it's a judgment call" (a barrister appearing at Courts A, B and C).

These views are broadly mirrored by the above results.

As well as the use of 'mistruth' strategies, it was also noted if lawyers referred to a witness's *character* during the course of questioning, including references to previous bad conduct:

Table 45: Percentage of witnesses experiencing references to or questioning about their characters during different parts of their evidence at Courts A, B and C

	n*	Percentage of witnesses experiencing references to or questioning on their characters
(Civilian) victims		
Examination in chief	101	1
Cross-examination	109	14
(Civilian) defendants		
Examination in chief	72	4
Cross-examination	72	11
Police		
Examination in chief	48	0
Cross-examination	42	0
All civilians (including experts but excluding defendants)		
Examination in chief	277	1
Cross-examination	286	9

***Refers to number of examinations in chief / cross-examinations for which this data was collected rather than number of witnesses.**

Clearly, references to witnesses' own character were relatively rare, but more common during cross-examination. It is interesting once again when comparing victims with defendants to note that a greater proportion of victims had to face questions about their characters during cross-examination than defendants. Of course, the vast majority of these observation sessions were carried out before the coming into force of the bad character provisions under the Criminal Evidence Act 2003. It was also the case that many advocates considered it a bad tactical move to bring in the characters of witnesses – or indeed to treat them too "harshly" – for fear of appearing to bully them in the eyes of magistrates or juries.

Before moving on to examine the reaction of witnesses to giving evidence, it will be useful to address several of the less structured observations made during the course of these sessions regarding lawyers' questioning styles. For example, it was clear from these observation sessions that the majority of witnesses (prosecution and defence) were referred to as Mr/Mrs/Miss in the case of adults, and by first name in the case of children. This was also true of victims when giving evidence, although when lawyers were discussing victims amongst themselves they would often refer to them as "complainants", which seemed to be a standard neutral term used to circumvent the debates on whether a victim is truly a victim prior to conviction. Indeed, on pointing this use of language out to one barrister, she admitted that it would sound strange to her if a lawyer used the term 'victim' before or during a trial. Interestingly, this seemed almost a subconscious, cultural, precept.

Nevertheless, lawyers never referred to victims as complainants to their faces, but again would usually employ first names for children and Mr/Mrs/Miss for adults. This was also true when the bench spoke to witnesses other than to ask a question in all three courts, which happened for 93% of all witnesses, often in order to ask whether they wanted to sit down.

In calling a witness, it was clear that the basic goal of an advocate was to elicit from that witness the details recorded in that witnesses' statement, which most advocates would have in their hand and work through during the examination in chief process. Conversely, during cross-examination, victims especially were quickly brought up on any derogation from (or addition to) their witness statements by defence lawyers. Such derogations were often used to support defence claims that the victim was unsure, could not remember, or may even be lying. This of course all chimes with our discussion in Chapter 5 as to the limitation placed on victims' accounts, and how they do indeed appear restricted to the 'old' version of the story presented at the stage of giving a witness statement.

Indeed, when such testing of the witness statement occurred, one frequent criticism made by witnesses themselves was that information had been reported by them to the police but not recorded in their statements. The standard response to this from defence lawyers was of course to point out that the statement had been signed and therefore presumably read and checked by witnesses at the time.

One explanation for these reported absences may lie again in the account-making model discussed in the last chapter; in that whilst such information *was* reported to the officer by the victim for the purposes of an *account-making* exercise[48], it was not recorded by that officer because it was of little use to the *evidence-building* exercise. As for victims' failure to spot such omissions when signing their statements, the distractions of very recent victimisation might well be explanation enough. In addition to this, however, if the victim does not approach the exercise with the same evidential priorities as lawyers or police officers, they might well miss the evidential significance of smaller details in favour of what's important to them in the construction of an account. Furthermore, given that one of the fundamental features of an account is that victims *develop* it over time, they may be unaware that once a statement is made and signed it cannot be

[48] Albeit, as noted above, very soon after the event.

changed to reflect developed understandings and interpretations of events. Indeed, from observing witnesses giving evidence I did form the impression that many of them did not fully appreciate the significance – from the lawyers' perspective – of detracting from their original statements. Whilst this opinion is not backed up by survey or interview data[49], some witnesses indeed appeared to believe that the purpose of coming to court was in fact to add details not previously recorded in the statement. On a related point, discussions with advocates confirmed that witness statements are almost always written by police officers rather than the victims or other witnesses themselves.

6.2.3 – Victims and witnesses' reaction to giving evidence

As explained in Chapter 2, the attempt was also made during these observation sessions to record the reactions of witnesses to giving evidence, and Table 46 displays the results of this exercise. It will be recalled that as witnesses progressed through examination in chief and cross-examination the researcher would intermittently note any emotional reactions displayed. As all witnesses obviously reacted individually to questioning, to record apparent emotional reactions at set intervals would have been artificial and unrepresentative. Instead, emotional reactions were recorded as and when they were displayed or appeared to the researcher to change in configuration or intensity, with multiple emotional reactions allowed at each time interval. Clearly this is a subjective exercise, but one which has resulted in a large amount of data in the form of some 37 different apparent emotional reactions to giving evidence in court:

[49] Although when the proposition was put to lawyers, some did agree with this interpretation.

Table 46: Witnesses' apparent reactions to examination in chief and cross-examination at Courts A, B and C (all witnesses)*, **

	Examination in chief		Cross-examination	
	n***	%	n***	%
Calm	339	99	306	89
Confident	339	99	307	90
Nervous	36	11	30	9
Tearful	17	5	30	9
Angry at defendant(s)	9	3	16	5
Defensive	2	1	30	9
Angry (generally)	5	1	30	9
Angry about questions being asked	2	1	32	9
Confused	6	2	24	7
Frustrated	1	<1	15	4
Determined	1	<1	2	1
Irritated or annoyed by lawyer asking questions	1	<1	11	3
Upset (generally)	4	1	6	2
Embarrassed	3	1	1	<1
Excited	1	<1	0	0
Restless / fed up / bored	3	1	3	1
Unsure	0	0	1	<1
Tired	3	1	1	<1
Vindictive or bitter against the defendant	3	1	5	1
Angry about incident	4	1	3	1
Upset about incident	7	2	5	1
Upset by questions	0	0	1	<1
Flustered	0	0	3	1
Angry at another witness	5	1	4	1
Uncomfortable	1	<1	0	0
Depressed	1	<1	1	<1
Remorseful	1	<1	2	1
Unsure what to say	2	1	3	1
Tongue-tied	0	0	1	<1
Professional	1	<1	0	0
Anxious	1	<1	1	<1
Animated	1	<1	1	<1
Angry at police	0	0	1	<1
Argumentative	0	0	2	1
Tense	1	<1	1	<1
Concentrating	0	0	1	<1
Determined	2	1	1	<1

***Percentages are of all witnesses observed for this research (n=342).**
****Multiple reactions allowed for each evidential component.**
*****Number of witnesses experiencing this reaction sometime during examination in chief / cross-examination.**

To give an example – and by way of clarification – Table 46 shows us that 36 witnesses (11%) appeared nervous at some point during the course of their examination in chief whilst only 30 (or 9%) displayed this reaction during cross-examination. This itself is quite an interesting finding, which once again seems to problematise the assumption that cross-examination is always the harder aspect of giving evidence. The reader will also note the very high percentages associated with 'calmness' and 'confidence'. These

results were produced by the fact that no witnesses were observed who were entirely unable to give evidence (due to intimidation, fear and so on) and therefore almost all witnesses appeared clam and confidence *at some point* during both components of the evidential process.

It is clear from this table that most of the apparent emotional reactions recorded in this research can generally be viewed as negative in nature (angry, tearful, vindictive and so on).[50] Apart from calmness and confidence, other positive reactions include 'determined', 'professional' and 'concentrating'. Overall, it is notable that only four apparent reactions during examination in chief (calmness, confidence, nervousness and tearfulness) were displayed by 5% or more of witnesses.[51] For cross-examination, a further five reactions can be added to this list (being angry at defendants, defensive, generally angry, angry at questions and confusion). This suggests witnesses tend to experience a wider range of emotions during cross-examination.

Table 47 gives the emotional reaction data just for those witnesses who gave evidence through special measures (n=39). Given that these were deemed 'vulnerable or intimidated' witnesses it is little surprise that a greater percentage of this sample seemed to demonstrate negative reactions compared with that on Table 46, although the figures are still lower than one might expect. Of course, the fact that the witnesses still displayed such negative reactions might indicate that special measures do little to negate their effect. Of course, in keeping with the view of some lawyers quoted above, it is possible to argue that special measures should not make the process completely easy for a witness in the adversarial system, but simply limit some of its traditional excesses. I would also draw specific attention to the higher prevalence of 'confusion' on this table compared to Table 46. Certainly the observation sessions seemed to suggest that some young witnesses found giving evidence through a video-link a little confusing. This was especially so when the questioning lawyer (who all the witness could see) broke off to speak to the magistrates or when opposing lawyers made an objection, as in such cases the witness could neither see nor hear the source of the interruption.

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[50] Although one might argue that – for example – 'anger' may help a witness deal with the process and compel them to get their points across more clearly.

[51] This figure does represent the percentage of all witnesses because all witnesses observed giving evidence were subject to one session of examination in chief.

Table 47: The apparent reactions to examination in chief and cross-examination of witnesses giving evidence through special measures at Courts A, B and C (all witnesses)*, **

	Examination in chief		Cross-examination	
	n***	%	n***	%
Calm	36	92	34	87
Confident	36	92	35	89
Nervous	8	21	9	23
Tearful	9	23	9	23
Angry at defendant(s)	3	8	3	8
Defensive	7	18	7	18
Angry (generally)	6	15	6	15
Angry about questions being asked	3	8	3	8
Confused	4	10	4	10
Frustrated	3	8	3	8
Irritated or annoyed by lawyer asking questions	1	3	1	3
Upset (generally)	2	5	2	5
Embarrassed	2	5	2	5
Excited	1	3	1	3
Restless / fed up / bored	2	5	2	5
Unsure	1	3	1	3
Tired	1	3	1	3
Vindictive or bitter against the defendant	2	5	2	5
Remorseful	1	3	1	3
Tense	1	3	1	3

***Percentages are of all witnesses observed for this research giving evidence through special measures (n=39).**
****Multiple reactions allowed for each evidential component.**
*****Number of witnesses experiencing this reaction sometime during examination in chief / cross-examination.**

Witnesses were themselves asked how they felt during evidence through the court user surveys conducted at Court B. The relevant results are set out on Tables 48 and 49:

Table 48: Questionnaire 4, witnesses' reported feelings during and immediately after giving evidence at Court B*

How do you feel now?**	Number and percentage	How did you feel during evidence?**	Number and percentage
Relieved	10 (37%)	OK	7 (26%)
OK	6 (22%)	Worried	6 (22%)
Satisfied	4 (15%)	Frustrated	4 (15%)
Angry	4 (15%)	Angry	4 (15%)
Worried	3 (11%)	Intimidated	4 (15%)
Scared	2 (7%)	Calm	3 (11%)
Unhappy	2 (7%)	Confused	2 (7%)
Happy	1 (4%)	Confident	2 (7%)
Frustrated	1 (4%)	Unhappy	1 (4%)
Confused	0 (0%)	Scared	1 (4%)
Other	2 (7%)	Other	1 (4%)

***n=27, multiple answers allowed.**
****Answers selected by respondents from a closed list.**

Table 49: Questionnaires 1-3, percentage of all witnesses who answered questions on how they felt during evidence at Court B*, **, ***

	During prosecution questions							During defence questions						
	0	1	2	3	4	5	6	0	1	2	3	4	5	6
Calm	10	10	5	35	15	20	5	15	15	5	30	10	15	10
Confident	25	10	0	30	20	15	5	20	10	0	30	15	15	10
Intimidated by the defendant	20	30	15	25	0	5	5	15	30	20	15	10	5	5
Intimidated by the lawyer asking questions	25	15	30	20	0	5	5	25	20	20	15	5	10	5
Intimidated by the courtroom setting	25	15	25	35	0	0	0	20	15	40	25	0	5	0
Worried	25	20	20	15	15	0	5	20	25	30	20	0	5	0
Scared	25	40	10	15	0	0	10	20	40	15	15	0	5	5
Angry	25	35	15	20	0	5	0	20	45	15	15	0	5	0

n=20.
****Respondents asked to rate each reaction on a closed list.***
*****'0' here indicates that no answer was given for this reaction.***

It is to be admitted that both these tables are based on a small numbers of respondents (n=27 for Table 48 and n=20 for Table 49). Nevertheless, the first table provides us with an indication that – for many witnesses – giving evidence does not leave them feeling especially 'bad' emotionally, as most said by this stage they felt relieved (37%) or 'OK' (22%). These results broadly reflect those of Shapland et al. (1985) who found that most victims felt they had succeeded in taking steps to get over initial difficulties with the evidence-giving process, and that 47% of victims in that study (the largest percentage) were 'satisfied' with the court proceedings. The 15% of respondents feeling 'intimidated' during evidence compares to the 21% reporting that they felt 'intimidated by the process' in the 2002 Witness Satisfaction Survey (Angle et al., 2003).

On this point, the view of one solicitor regarding the *ordering* of the evidential process in the adversarial system is interesting:

> "They [witnesses] can go out feeling quite put out, quite deflated...cross-examination being the final stage of their evidence, they come away thinking 'why did we bother, he's making out that it's all my fault, that I'm the guilty one'" (a solicitor advocate appearing at Courts A and B).

That said, even whilst giving evidence, the highest proportion of witnesses in the fourth survey said they had felt 'OK' whilst giving evidence (26%). Of course – and in contrast to the observation data – it is clear that the bulk of the survey respondents recalled negative emotional reactions whilst giving evidence. The suggestion could therefore be made that witnesses do tend to react badly to giving evidence, but in

keeping with the observed data they prepare themselves sufficiently to keep this concealed, possibly because they know that *appearing* calm and confident is an important aspect of the process. Alternatively, however, it may be that witnesses tend to focus on and report the negative aspects of giving evidence more readily than the positive (or at least neutral) aspects such as a sense of vindication or satisfaction at holding one's own. Of course, as argued in Chapter 5, it seems commensurate to a victim-centred system that victims would indeed take away some positive aspect away from the criminal evidence procedure. In particular, I have argued that therapeutic outcomes may be achieved if the evidential process was more conducive to victims' account-making, which – the above data seems to confirm – has not yet been achieved.

As noted in the methodology chapter, few witnesses filling in the first three waves of the questionnaire at Court B returned to complete the questions on what it had been like to give evidence.[52] Those that did answer these questions were asked to rate the degree of specific emotional reactions they felt on a scale from 1 (didn't feel at all) to 6 (felt extremely e.g. calm) during the prosecution and defence questions. These results are displayed on Table 49. With only twenty witnesses completing all or part of these questions it would be fairly meaningless to split them further down into victims and non-victims – as was originally intended – and any findings derived from this table must be treated with caution.[53] Nevertheless, the table does broadly indicate that when 'negative' reactions were reported they tended to be on the less severe side of the scale ('1 – not at all' to '3 – to some extent'). Note also that the highest single groups of witnesses said they had been 'to some extent' calm and confident during examination in chief and cross-examination, which is in keeping with the observation data.

Overall, the results on the reactions to questioning displayed by victims and witnesses indicate that obvious negative reactions to giving evidence as a whole do not seem as widespread as we might suppose. In fact, in the observation data, 178 (52%) of witness failed to demonstrate any apparently negative reactions in any part of their evidence. A further 89 witnesses (26%) appeared to experience only one adverse reaction. In the case of victims giving evidence, 32% (n=33) displayed no negative reactions at all and a further 29% (n=30) appeared to experience only one negative reaction.

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[52] See Appendix 2.

[53] Not least because some witnesses choose to leave some reactions blank rather than gauging them from 1-6. Number '1' on the scale was clearly labelled as referring to not feeling that emotional reaction but it could be that this is what many of the blanks indicate.

Clearly, these figures do suggest that victims of crime may be more negatively affected by giving evidence than witnesses in general. Nevertheless, they also suggest that a sizeable proportion of witnesses – and even victims – give evidence without any apparent difficulty. The point is that whilst the literature in this area tends to emphasise the plight of those witnesses and victims especially affected (or even damaged) by the evidential process, it is important to realise that many victims and witness give their evidence in fairly sedate tones without displaying much difficulty. Indeed, in the fourth version of the witness survey distributed at Court B, out of the 27 respondent witnesses (all of whom had given evidence) 10 said it had been easier than expected, another 10 said it had been about the same as expected, which left only seven saying evidence had been a more difficult experience than expected. This all suggests that practical issues – such as allowing victims to finish speaking when giving evidence – may be just as important as addressing issues like intimidation and fear of the courtroom when placing victims 'at the heart' of the criminal trial. It also seems to back up the contention that the adversarial system may not need reforms of a fundamental nature to achieve victim-centeredness.

In order to derive some impression of whether witnesses' reactions to giving evidence had changed over time, a number of the more experienced practicing lawyers and court staff were asked whether they themselves had noted any difference in the 'average' witness demeanour over time in terms of confidence or preparedness to give evidence. Interestingly, most respondents were of the opinion that little appreciable change had occurred:

> "I wouldn't say [witnesses are] more prepared, I can't say that I've particularly noticed a difference there...I haven't noticed in their evidence [that] it's made any particular difference" (a district judge sitting at Court A).

> "I don't particularly recognise a different attitude to the court...In terms of whether they're better prepared, I suspect there are an awful lot to whom all these changes haven't made that much difference...I'm not sure that I've noticed a huge difference in the demeanour or preparedness of witnesses" (a district judge sitting at Court B).

> "I don't think that they turn up any more confident...it's very rare you'll have a confident witness, it does happen but it's rare" (a solicitor advocate appearing at Courts A and B).

Of course, this may not be the dismissal of recent measures it appears. Possibly the apparent lack of change may indicate that whilst more vulnerable and intimidated witnesses are arriving to give evidence (through special measures, following more detailed information and so on) fewer of them are having significant problems with the process because of the changes that have been put in force. It may also imply – as suggested by the extracts given above – that fewer lawyers are prepared to indulge in more intimidatory cross-examination.

That said, many practitioners considered that being nervous about giving evidence was and always would be part-and-parcel to the process:

> "I don't think *anybody* can be prepared for cross-examination" (a solicitor advocate appearing at Courts A and B).

> "The vast majority of people coming into the scenario for the first time are going to feel nervous...you'll never get completely away from that. It's like somebody going to the dentist[54], there are things in life that you will feel nervous and anxious about" (a district judge sitting at Court A).

One respondent believed that the reason for this lack of appreciable change in witness preparedness was the continued lack of information provided to them:

> "They don't appear to be much more understanding of the system...the leaflets are about what's going to happen in court...but do they really paint a realistic picture? Do they say 'you're likely to be listed with another trial'? Whether they give them the real story is another thing. I think it would be better to prepare them by giving them a bit of background about the court system as a whole" (a legal adviser at Court B).

This closely reflects a point raised in the last chapter, that many sources of information provided to victims and witnesses fail to provide a truly frank view of the system, omitting details like waiting times and issues like hearsay.

To provide one final view from a solicitor, which seems to reflect the general beliefs of most lawyers on the changes or lack of changes apparent in witnesses' reactions to evidence:

> "Some witnesses do well, some others still don't, which has perhaps always been the case" (a defence solicitor appearing at Courts A and B).

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[54] Interestingly, this is the second respondent to draw a simile between the experience of going to court and a visit to the dentist.

6.2.4 – Special measures

We have already touched upon the issue of special measures in our discussion of the calling of witnesses. We will now examine the use of and reaction to these measures in greater detail.

A total of 39 witnesses were observed giving evidence via special measures and – at the outset – it should be noted that almost all special measures observed in this project were for the benefit of children giving evidence. Special measures were of course extended to apply to adult vulnerable and intimidated witnesses under the Youth Justice and Criminal Evidence Act 1999. Pre-recorded examination in chief is still only available to children and – although I learned that such evidence was being piloted at Court C for adults – I did not observe this first hand. In total, seven adults were observed giving evidence through special measures, all of them women[55] and four of them victims (the other three being prosecution witnesses). Four of these witnesses gave their evidence behind screens and three gave evidence via live video-link. This latter three were all giving evidence in the same trial at the Crown Court; a case of multiple sexual assaults and rapes.

Views on the advent of special measures – especially video-link and pre-recorded examination in chief – were somewhat mixed amongst the practitioners interviewed or otherwise spoken to for this research. Most agreed it was generally a good thing to provide such facilities for 'genuinely' vulnerable or intimidated witnesses, especially children:

> "There's no question that there are some witnesses who do benefit from being behind screens or giving evidence by video-link, they feel a little more relaxed in themselves, they're not surrounded by all this [the court], they're in a small room, they're looking at a screen and they're seeing one person at a time and they're able to concentrate on the question...the danger of the old system was that in reality the best evidence never got before the court" (a district judge sitting at Court B).

> "The live-link is probably getting better evidence out of the youngsters...we used to have a lot of youth trials with people crying in them...they don't seem to be getting as upset as often [now]" (a legal adviser at Court A).

[55] No lawyer spoken to for this research had experience of an adult male giving evidence via special measures.

Some lawyers also felt special measures (especially video-link) brought some advantages to the advocate calling the witness:

> "You do have a bit more time to build up a rapport" (a barrister appearing at Courts A, B and C).

> "It can work equally well for the person calling that person as a witness...because they sit and reflect, they're not overpowered by the situation" (a district judge sitting at Court B).

Nevertheless, several interviewees saw a problem in what they perceived to be the 'broad-brush' application of special measures to any witnesses who could be considered remotely vulnerable or intimidated:

> "Special measures directions are good if they assist a particular witness. The blanket introduction of them in the Youth Courts for under-16s, violent or sexual offences, I don't necessarily agree with that. Whilst one can see the logic behind it there are some mature young people that might be quite comfortable to give their view in a court setting and may not like to give their evidence in another room to a camera, which I can perhaps understand" (a legal adviser at Court B).

This question of what to do in situations where a witness might be automatically entitled to special measures but does not wish to give evidence in that way arose several times during the course of these observation sessions. Indeed, in one case a trial was adjourned because the video-link equipment was not working, even though the young witness was quite happy to give evidence in the courtroom. One legal adviser gave her view that vulnerable and intimidated witnesses did not have to give evidence via special measures if they did not want to, and remarked on how lawyers never seemed to give witnesses the choice:

> "I don't remember any case where [lawyers] said well, we'll go and show them [witnesses] what a courtroom setting is like [then] we'll go and show them the [video-link] room where they'll have to sit and see what they'd prefer...the wording [of the Act] is ambiguous, it can be argued either way...but it's not set in stone" (a legal adviser at Court B).

The same respondent went on to describe one recent consequence of such attitudes:

> "We also had a case a fortnight ago, a young lad giving evidence on the link who didn't want to give evidence on the link...he started giving his evidence via live link and then something arose as he was talking – a legal point – so the judge started asking the advocates questions about this legal point. The lad ended up storming out of the room saying he wasn't going to give evidence anymore...because he felt that people were discussing the case round him, that it

was confusing for him because he could hear advocates talking but didn't know who was saying what. And he actually ended up refusing to give evidence, because he felt peed off" (ibid).

This is of course exactly the point raised earlier, that witnesses may actually find it confusing not being able to see other people in the courtroom aside from the person asking questions. On a wider point, it was quite common to see lawyers discussing legal points 'around' witnesses both during video-link evidence and when the witness was standing live in court. In such cases, far from being a 'victim-centred' criminal justice system, it appears that criminal justice is 'going on around' victims and witnesses whilst explicitly excluding the victims and witnesses themselves. The same can be said when witnesses are compelled to give evidence from a remote location (or denied the choice).

This also relates back to an account-making point, in that victims are not being permitted to tell their stories in the manner they feel most comfortable, and may actually find it difficult to make an account when distanced from the audience of that account. Indeed, many respondents noted the problems associated with video-link rooms in particular:

"Take this court [Court A]. Have you been down to the video-link rooms? It's like a dungeon! How can that be witness-friendly for a young person to go down there? Honestly, it looks as if you're going into a cell...When you're there all day waiting to come on, it's a long time for you to be cooped up in a room like that, and it can have an effect upon them in the way they give their evidence" (a solicitor advocate appearing at Courts A and B).

These points also echo a previous observation made in this chapter, that witnesses often feel 'locked up' inside witness waiting rooms, rather like they are on trial themselves.

In Chapter 3 we discussed evidence from the NSCPP (Plotnikoff and Woolfson, 2005) that video-link evidence was being 'forced' on some children. We also examined the 'MG2 initial witness assessment' form used by police and its accompanying guidance.[56] Concern was expressed at that point that victims might be given little say over whether or not they gave evidence through special measures, especially when dealing with a child under the age of 17 in cases of sexual offences or violence, neglect or abduction; where the child would be considered 'in need of special protection'. The above extracts

[56] See pages 98-101.

seem to confirm this impression, which seems completely at odds with the notion of a victim-centred system..

Aside from the impact on witnesses themselves, defence solicitors in particular argued that what they saw as the automatic granting of special measures applications to prosecution witnesses was manifestly unfair, especially given the fact that defendants cannot apply for special measures[57]:

> "I've done trials [with special measures] where the defendant can barely see over the dock and the complainant's been older and – in my view – it's an overprotection in that situation...Special measures are a rubber stamp. The view of the district judges is, if it's a child, if it's a sexual case or violent, it's as of right...if you now raise the issue of the timing of the application what we're told is...it's automatic anyway so what difference does it make...It's pointless arguing against it...that's the way we now accept it but I don't like it" (a defence solicitor appearing at Courts A and B)

> "Certainly kids are saying it's more scary in this [video-link] room than it is in court...I think I've probably had more kids crying and upset in those situations than I ever recall having in a witness box. Whether or not it's because they feel able to, whether they feel they're in an informal environments in there and they're able to break down...I don't know" (a legal adviser at Court B).

Nevertheless, it is certainly the case that no applications for special measures were refused during the course of these observation sessions[58], even when they were made on the morning of the trial (which was relatively frequent and again arguably should have been dealt with at the PTR stage) and therefore technically outside the statutory time limit for such applications. That said, one district judge raised the important point that – without generalised rules – the only alternative would be to spend time carefully assessing each individual witness, which was not good for the court or the witnesses themselves:

> "Because you can't go into a forensic analysis of all these witnesses, I think it's right that you have general rules for them" (a district judge sitting at Court B).

Indeed, not all respondents were of the opinion that special measures application were now an automatic 'right', certainly not in the Crown Court:

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[57] Confirmed in the case of *R. (on the application of S)* v. *Waltham Forest Youth Court* [2004] 2 Cr. App. R. 21.

[58] Indeed, only one such application appeared to give any bench pause for thought, and this was before a circuit judge in Court C with a particular reputation for being unusually firm with such things.

"We do seem to get a lot more special measures applications now than we did twelve years ago, and I guess we probably get more granted than we did twelve years ago. But I would say that of the applications that are made now, probably a smaller percentage of them are granted than the percentage of those made 12 years ago...there's a lot more applications made where they're just 'trying it on' because they know that they can make the application. We had one this morning where the prosecution were making an application for screens for two mature men in their 40's and 50's. That sort of application probably wouldn't have been even considered 12 years ago" (a court clerk at Court C).

This view suggests lawyers in general are more willing to make a special measures application in recent years, but judges are not necessarily more willing to grant them. Of course, implicit in this quotation – and in the words of several other interview respondents – was an underlying view amongst lawyers and court workers that certain kinds of victim witnesses are 'right' for, or perhaps 'deserving' of, special measures and some are not:

"Two of the witnesses had got referral orders, ISPs, supervision orders, they'd been in and out of the court like yo-yos. And these buggers [the prosecution] want special measures for them! I said 'you are joking!' They said 'he's fifteen'. I said 'He's an oik!' [they said] 'He's entitled to that protection'. I said 'He'll laugh at you! If you put them in there they'll laugh at you, they know what you're doing!'. So he said 'We'll have to make the application'. So I told an unnamed district judge 'This bloke is laughing at us, he thinks it's all a big joke, he's a crook, he's a liar, a cheat'. The district judge says to me 'I suppose you'll be saying that to his face?' I said 'Oh aye! But with a lot more force than that!'" (a solicitor appearing at Court B).

Of course, it is well worth noting here once again that a large proportion of victims of crime will have criminal convictions. Also on the issue of who should and should not receive special measures, even respondents who were broadly in favour of the measures were still dubious about the possibility of applying special measures to adult witnesses. We saw this in the anecdote from the penultimate quotation regarding the middle-aged men.

Clearly, some defence advocates in particular were of the opinion that the system could be abused, with witnesses requesting special measures just to attract sympathy from the bench or jury. This of course leads us to the very important question of whether the use of special measures has any actual impact on the findings of magistrates or juries (or even district judges). The number of trials employing special measures in this research was not sufficient to produce quantitative data on this point and, once again, interview

respondents were divided in their opinions; although generally speaking most thought that special measures made no difference to bench or jury decisions, especially now benches had grown accustomed to them:

> "I've seen 100 special measures, half of have been guilty and half of them have been not guilty" (a legal adviser at Court A).

> "The magistrates are more used to it now, and so it's nothing out of the ordinary, and so it perhaps doesn't affect them as much as it might have done when these things first came around, I think they're used to it" (a legal adviser at Court B).

> "I would hope juries would perceive now that this is a normal state of affairs, it's not an indication that there's something nasty or unpleasant about the defendant and therefore we can be satisfied about his guilt. I think people know now – they've see it on TV – it's part of the system" (a district judge sitting at Court B).

Nevertheless, another district judge was clearly of the view that the advent of special measures might sway the results of a case:

> "I don't find those as easy, I find it harder to assess the evidence from someone who's giving evidence over a video-link...From colleagues in the Crown Court who deal with cases involving abuse of children and so on, they have also got the impression that juries probably find it harder to convict on evidence given over a video-link, because it's somehow more remote, you get more of a feel of what's going on if the witness is in front of you. I think in many ways it doesn't probably serve the ends of justice, although I can see why it's much more comfortable for the witness" (a district judge sitting at Court A).

As an aside, there is a very significant implication in this quotation that making witnesses comfortable is opposed to the ends of justice. In a victim-centred system, however, it is surely the case that victim comfort would be prioritised (albeit – as noted earlier – perhaps not to the extent that the process becomes 'easy') because such comfort would improve the quality of the evidence (and, importantly, the *account*) and this would be considered 'in the interest of justice'.

Returning to special measures, conversely some lawyers were concerned that prosecution witnesses giving evidence via video-link were more likely to be believed than defendants, who could not:

> "If I was defending in those circumstances and we had complainants there I wouldn't like it because of course you know of course that your defendant then is going to be there in court and be seen for all to see. I just think it distances them, it almost puts them on a pedestal, little kids – depending on what they're saying – are often believed" (a barrister appearing at Courts A, B and C).

One solicitor advocate was not so concerned about video-links having an effect on magistrates, but was worried about screening off witnesses in the courtroom itself:

> "I think TV screens probably help children, I think that works. I'm not sure about screens in court...the downside of screens is it's very overt, particularly from a bench's point of view, so they're bound to be influenced by it to some degree, [they] think 'if this person is sufficiently intimidated what kind of a nasty character is the defendant?'" (a solicitor advocate appearing at Courts A and B).

Prosecution and defence lawyers also continued to point out some of the more traditional criticisms of video-links; that they distorted information like the relative size of defendant and victim and prevented juries and magistrates from judging the body language or demeanour of witnesses, which almost all respondents agreed was vital to the process both for the bench or jury and for the lawyer asking questions:

> "As well as weighing up the evidence you also weigh up the witness, and you do that in all sorts of different ways, and it includes the way in which the witness reacts to questions and so on. All those little things add up to the whole, and [on the video-link] you find people sitting slightly off side or there's a bit of a problem with the camera or they're further away than they would be if they were sitting [in court] and their facial expression is sometimes lost, which I personally haven't found as easy" (a district judge sitting at Court A).

> "It's not the best way of giving evidence though is it? If you've got everybody in court to give live evidence I think it's much better, because you can see the demeanour of them" (a solicitor advocate appearing at Courts A and B).

Indeed, in one trial at Court A the defence lawyer was so adamant on this point that the court usher was asked to go to the video-link room and stand next to the victim giving evidence to provide some sense of scale (with dubious results). Other lawyers admitted that they found cross-examination more difficult through video-links especially, because they could not tell if they were 'on to something' with the witness:

> "I find it extremely difficult to get a flavour of the case. You can have a live witness in court and you can sense if you're on to something. And it's our job, but you know when they are rattled" (a defence solicitor appearing at Courts A and B).

> "We like them in front [of us] because you can see their body language, and on a on-to-one you can get more into their ribs if you see what I mean" (a defence solicitor appearing at Court B).

Another district judge pointed out that it was also hard for the witness not to be able to judge the lawyer's demeanour:

> "I suppose they have no relationship with you either, because you're just a face on the screen, they can't see how *you're* reacting to something" (a district judge sitting at Court A).

The final issue to be discussed relating to special measures is pre-recorded examination in chief. Owing to the inclusion of a 'free narrative' phase by interviewing police officers (described in Chapter 3) this is probably the closest a victim's evidence ever gets to true account-making in the present system. As such, we have already noted the results relating to the percentage of time witnesses are permitted to speak when giving evidence in this manner.[59]

During the observation sessions, 16 witnesses were seen giving evidence through pre-recorded examination in chief, aged from 8-16 years old. The evidence would be conducted in broadly the same way as regular video-link evidence, in that it would begin with the young child on the screen being introduced to everyone in the courtroom by the bench or by the legal adviser when sitting with lay magistrates at Court A or Court B. The video would then be played whilst the witness watched from the video room. Watching the videos revealed that a child witness would be interviewed by a specially trained police officer in specialist suites with the appearance of a typical front room, designed to avoid intimidating the child. The officer would begin by pointing out the microphones that would record what the child said. This would then be followed by a few 'settling down' questions about the child's hobbies and school. Next would follow the 'free narrative phase' where the child was able to make their account without any interruptions from the interviewing officer. Such accounts were usually short, taking 5-10 minutes. The officer would then question the child in a more traditional (but non-intimidating) manner about the account, which would always form the longest component of the process. This was all broadly in accordance with official guidelines (Home Office 2001a).

On average, the pre-recorded evidence tapes took an average of 52 minutes to play[60] – although they ranged from thirteen minutes to 2 hours and 13 minutes – after which the bench would usually offer a break to the witness. At this point, the lawyer calling the

[59] See Tables 35 and 36 above.

[60] Standard deviation = 30.96.

witness would usually ask a few supplementary or clarification questions, after which cross-examination would take place in essentially the same way as regular video-linked evidence.

Yet again, this issue provoked several different views amongst respondents. Interestingly, for example, the same district judge who was so sceptical of video-linked evidence above was actually greatly in favour of pre-recorded examination in chief for children:

> "I'm actually quite used to that particular system because I used to do a lot of family work in practice...so I represented a lot of children and did a lot of public law children cases, and so there were an awful lot of video interviews involved in that...Having represented children I had the benefit of a lot of input from guardians ad litem and also child psychologists, who explained to me that it's often useful to watch for the signs of what [young] people are actually doing whilst they're talking, not just what they're saying...so I have quite a lot of experience so it didn't trouble me to watch this" (a district judge sitting at Court A).

Hence, because this particular judge had become very used to seeing this kind of evidence, it was not viewed as controversial to import it from the family area into criminal proceedings. This extract also indicates that relevant training can change ingrained cultural view amongst lawyers even on fairly contentious issues.

A second district judge (this time from a defence solicitor background) also considered pre-recorded examination in chief to be beneficial from the perspective of the system:

> "The younger the child, the more leading you get and the more careful you have to become...I think it's better that you have that evidence and you treat it carefully – as you should always – it's better that you have that situation than a situation which might mean...the child being [confronted] by an experience he or she may not be able to deal with" (a district judge sitting at Court B).

Indeed, several respondents were of the view that important evidence might be lost without the advent of pre-recorded examination in chief:

> "Two years in a twelve and a ten year-old's life is a long time...it is much better to have their evidence in chief videoed [at the time] and played before the court" (a solicitor advocate appearing at Courts A and B).

> "I've seen a couple of cases where it's been sex abuse on children, and when the children have given their initial police interviews, whatever time lapse has happened that child has now grown a little older, become a little wiser, say it

might be somebody who was 8 at the time and it now 10 or 11 by the time this case gets to court. From the first interview on the tape in the police station there's a noticeable difference from what that child does then – raw, naive, obviously truthfulness, 'can't make it up' – to how that witness would now be perceived in a TV-link room – grown up a bit more, appearance looks a bit different, a bit more world-wise, and how they come across now compared to how they come across then. And I've felt on one or two cases that a jury has not taken enough notice of that first interview with the police, when these incidents first happened, and how that person was at that particular time, because sometimes they just don't come across well on a TV-link" (a court clerk at Court C).

The suggestion being made in this second extract is that young children may appear more believable having recorded their evidence straight away on video, compared to giving live video-linked evidence sometime later. Here, the clerk believed that the defendants in the cases he was describing were clearly guilty, even though the jury had acquitted on both occasions. The clerk's explanation for this was that both juries had been "overly swayed" by the *live* evidence (presumably cross-examination) in which the now slightly older children had not come across so well.

As noted previously, however, one might argue that such questioning is controversial in the sense that – certainly in these observation sessions – many details which strictly speaking fell outside the rules of evidence were nonetheless presented in open court. This was described as very problematic (unprompted) by at least one legal adviser:

"I think the pre-recorded evidence that the police do is awful! It doesn't follow the rules of evidence. It's horrible! I just think it's worrying, the police need to be trained on evidence...things can come out in that evidence, most of the time it's just that's totally irrelevant...but it still goes to the quality of the evidence I think and it can affect an outcome" (a legal adviser at Court B).

Other respondents also expressed reservations at the skills or level of training amongst officers carrying out such interviews:

"My own experience of police officers interviewing is that a lot of them just don't know how to interview. They're trained but they just don't know how to do it properly" (a solicitor advocate appearing at Courts A and B).

Other lawyers too were concerned about the perceived inability in the magistrates' courts to edit such evidential tapes, or even skip past 'irrelevancies':

"Police officers aren't as conversant with the legal principles in relation to admissibility as a lawyer might be and they also have a vested interest in progressing the case from their perspective. Taking the magistrates' court, it's a

balancing act at times because if you're wanting it interrupted every few seconds to stop this and to wind it on, then I think they [magistrates] wonder what's happening here and they can imagine that it may be something worse than it really is" (a defence solicitor appearing at Courts A and B).

Again, it was certainly the case in these observation sessions that pre-recorded examination in chief played at the magistrates' court did not tend to be edited and, indeed, it was often considered practically unworkable to use the video to skip past areas which were evidentially contentious. Magistrates and district judges were therefore effectively being trusted to simply put such details from their minds.

Overall, however, it must be said that pre-recorded examination in chief did not seem to promote as much controversy amongst lawyers as was perhaps anticipated:

"Some interviews are better than others...[but] my experience is that in most instances they [police interviewers] are pretty well trained" (a district judge sitting at Court A).

"I think video-recorded examination in chief is very helpful" (a barrister appearing at Courts A, B and C).

The occupational culture of legal practitioners was generally approving of special measures in principle, but often wary of them in practice. Given the degree of control lawyers tend to exert over witnesses during evidence, it was somewhat ironic to note the disgruntlement of many lawyers when they felt they were losing part of that control to special measure. Nevertheless, to make a generalised point about lawyers' reactions to special measures, the issue of *whom* should be afforded such protection seemed far more controversial than the measures themselves. Hence, we have seen that 'undeserving' witnesses (by reason of past convictions) were not considered suitable for the measures. We have also seen that adults were not usually thought of as requiring this level of protection. As such, the apparent barrier to allowing victims to make their accounts in this way during trials is not so much an *evidential* or *procedural* barrier based on perceptions of justice or legal rules, as it is one of cultural understandings of 'victimhood' or 'vulnerability' amongst legal professionals and court staff. This betrays an important point; that usually it seems to be stereotypical or *ideal* victims who are thought to 'deserve' special measures.

6.2.5 – The impact of crime in criminal trials

Finally on the actual running of criminal trials we should examine what place, if any, is given to the impact of crime. Once again, it is important to emphasise that the present thesis is not concerned with sentencing, but rather the substantive trial process itself. As such, the question here is whether any information on the impact of crime is adduced to the court at *this* stage. That said, I have taken the opportunity in this research to examine the question of victim personal statements and their present use; firstly because there is little outstanding literature on this issue and, secondly, because it is relevant to our first research question and our discussion on victims being 'at the heart' of the entire criminal justice system as a whole.

The overriding point to make about victim impact is that – for the vast majority of criminal justice practitioners and personnel – such issues had little place in the trial procedure, and should instead be reserved entirely for the sentencing stage. Nevertheless, information about the impact of the crime on the victim would occasionally arise in the trial itself, sometimes during the prosecutor's opening speech and sometimes during victims' evidence. Nevertheless, in both instances these tended to be very restricted accounts, confined to the immediate (usually physical) impact of a crime on the individual victim.

The reasons for such restrictions are clearly debatable. One explanation is that at this stage prosecutors sought to describe or elicit from victims the impact of crime only to the extent that it was necessary to prove the case. For example, in cases of common assault it is necessary for a prosecutor to prove that a victim apprehends imminent unlawful violence. As such, it was fairly common for a prosecutor when examining victims as witnesses to ask "how did that make you feel at the time?" Similarly, when trying to prove a case of assault occasioning actual bodily harm, the prosecutor must show that 'actual bodily harm' was indeed inflicted on the victim.[61] As such, it was equally common in such cases for a prosecutor to ask "did you sustain ay injuries as a result of this incident?" and, ideally, such questioning would be backed up by photographs of said injuries or a doctor's report. As such, in 73% of all victim

[61] Defined as "any hurt or injury calculated to interfere with the health or comfort [of the victim]" provided it is more than "transient and trifling", *R* v. *Donovan* [1934] 2 K.B. 498 (CAA).

examinations in chief observed for this research victims were asked something about the impact the crime had upon them.

Again, however, this restriction on the advent of victim impact information during the trial may be more cultural than necessary to the process. On this point it is telling that – as a general impression in the trials I observed – less information on victim impact tended to be adduced following an effective trial in which the defendant had been found guilty than in a cracked trial where the defendant had changed his or her plea. Hence, the culture seemed to be one of following a full trial, no more is said about the victim but following a shorter (non) trial it is more permissible to elaborate on such details.

Questioning about the impact of a crime would also sometimes come from defence lawyers during the cross-examination of victims. This occurred in 34% of all victim cross-examinations. Here of course the goal would be to demonstrate that *lack* of impact on victims, the absence of any injuries for example. Indeed, to this end perhaps the most common section of the trial for which the impact of the crime on victims to be discussed was the defence advocate's closing argument.

When asked questions about the impact of crime during evidence, victims would occasionally attempt to describe the more wide-ranging impacts of the crime, including long-term physical complaints or fear. Such instances were however generally the exceptions rather than the rule, and were usually curtailed by the questioning lawyer either through asking the question in a restrictive manner in the first place, or through halting the victim in the witness box (although the former strategy was by far the more common of the two).

Overall then, it was clear that magistrates, district judges and juries do not receive a great deal of information regarding the impact of crime on victims during the trial process itself. When such information does arise, it comes in a very 'piecemeal' fashion from the evidence of various witnesses, medical evidence and the victims themselves. Clearly then, there is no specific part of a criminal trial in which the impact of the crime on the victim is voiced. The underlying concern that such information would sway a jury or bench is of course a reasonable one. Nevertheless, this does again seem to detract from our account-making notions of victim-centred criminal justice, in that the stories told by victims during trials are thereby missing a very important component, the effect the incident had upon them.

As described in previous chapters, victim personal statements were introduced nationally in October 2001 in an attempt to convey the impact of crime on victims to sentencers. Again, because these were clearly viewed as a *sentencing* exercise amongst practitioners, very little mention of them was made during the trial itself, and they were never called for during a trial by the bench at any court.

On one single occasion a solicitor advocate from outside the local area substantially quoted a victim personal statement directly during his opening speech whilst working as agent to the CPS, drawing specific attention to the fact that he was doing so. On questioning the solicitor informally after the proceedings, he expressed some surprise that victim personal statements are not usually heard from during trials in the area under review. This episode provides a hint that the exact use being made of victim personal statements may vary between geographical areas.

In the present study, most respondents agreed that a lot more victim personal statements were taken by police officers from victims than had previously been the case. It was also true that, if victims did not want to make such a statement, a clear note was being made on the relevant form that the victim had been given the opportunity to do so:

> "I've seen a lot of them recently, conversely I've seen a lot of 'I've been explained the VPS system but I don't wish to make a statement at this time'. We are seeing them increasingly" (a barrister appearing at Courts A, B and C).

> "More recently it's becoming clear that the police are remembering to do it" (a legal adviser at Court B).

Discussions with police officers and an interview with a police chief inspector largely confirmed this view:

> "We've linked it to the MG11, the sample weeks that we've done, we've actually been monitoring VPS take-ups, and it's still low in the force but – although I don't have any comparison with other forces – I suspect we do quite well at it. At least it's offered to people...at least the rates have improved" (a police chief inspector).

The 'MG11' is the standard pre-printed witness statement form filled in by police officers and signed by witnesses. Here, the officer was referring to the fact that the VPS is now completed on the same form. This respondent was very clear on the point that, whilst many victims still did not choose to complete a victim personal statement, they were usually now being given the option and explanation to do so. In addition, the back

of the printed MG11 now had its own witness needs assessment form[62] so the officer could flag up at an early stage whether special measures might be needed in court. According to the chief inspector, these were being completed in 78% of cases.

In order to get some indication of how such VPS statements were being taken, and the form in which they appeared in the case file, respondents were asked what they tended to look like. The unanimous view was that they followed on from the traditional witness statement, usually in the same style of language and in the same handwriting. Consequently, it was clear that the statements being taken in this area are usually completed by the police along with the substantive witness statements:

> "From the victim personal statements that I have looked at, I'm convinced that as many of them as have come from the individuals have also come from the police officer's input...I've never seen one written by the victim, it's a continuation of their statement" (a defence solicitor appearing at Courts A and B).

This of course again suggests that the victims' account is being replaced with that of the police.

The attempt was made as part of the court user's survey distributed at Court B to elicit the number of respondents who had made victim personal statements. Out of 22 respondents who categorised themselves as victims of crime, six said they had not been given the opportunity to make a VPS, six said they had, one could not remember and the remainder did not answer the relevant question. There was clearly a lot of confusion about these questions, with victims who claimed they had not been given the chance to make a victim personal statement then saying they *had* in fact made one. Also, several non-victims, and even defence witnesses, claimed to have made a VPS.

I include this information because it is clearly indicative of a general lack of knowledge about victim personal statements in this area. That said, when discussing the equivalent questions on the WAVES survey, one OCJR/RDS representative noted that many respondents (nationally) may have been confused by such questions, not knowing exactly what a victim personal statement is or the difference between this and a witness

[62] This is different from the MG2 form and asks whether witnesses need special measures or have any 'specific care needs'.

statement.[63] Of course, this may reflect the practice just described of having the VPS follow directly on from the witness statement on the same MG11 form.

So far we have been referring to initial VPS statements made at the time of giving a witness statements. Interestingly, very few lawyers or practitioners spoken to for this research realised that victims could be given the opportunity to make subsequent 'stage 2' victim personal statements if required, and *none* had actually seen one. Conversely, however, the local witness care unit was very clear that the witness care officers had been proactive on this issue:

> "We're actually encouraging people to make the VPS...by explaining that just because [a victim] says no initially we can get someone to you right up till the day of court, or if you want to do one and then you've change your mind we can alter it again, it doesn't have to be a one off and done! And that's something the witness care officers have now taken onboard" (the manger of a witness care unit).

Interestingly, one specific criticism made of many victim personal statements was that they were being taken too early from the victim's (and police officer's) perspective:

> "It's usually done right at the very start of the process, when victims and witnesses have perhaps other issues at the forefront of their minds. The officers have other issues because they'd rather like to catch the person that's been involved in this offending behaviour. So for me it's a little bit too early and maybe the wrong line of attack in terms of who takes that statement. Someone like a dedicated victim/witness support officer – not a police officer who has other priorities – should be dealing with that kind of issue, maybe a week or so after the incident when people's recollections, peoples thoughts have become a bit clearer. When you're traumatised the last thing you want to do is write about [the impact of crime] you don't really know what you're thinking at that stage do you?" (the District Legal Director at Court A).

This in fact mirrors closely a point made in the last chapter regarding victim's accounts, in that the present system does not allow any time for the natural reflection on and development of the story from the victim's perspective.

The last quotation also raises the issues of whether the police are in fact the best people to be completing VPS statements. Certainly, there seemed to be a broad consensus amongst lawyers that whilst VPS statements were appearing more in the files, they were

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[63] This respondent also reported that early WAVES figures confirm that more VPS statements are now being taken.

often short and did not provide a great deal of information. Lack of training and understanding of the scheme amongst police officers was often blamed for this state of affairs:

> "It depends on how well trained the police officer is to ask the questions about 'how has it affected you'. If somebody was mugged in the street – 'do you only go to certain parts of town now?' – because a general question just on 'how has it made you feel' might not elicit any answer" (a legal adviser at Court B).

One solicitor advocate described the typical VPS statement as:

> "Bland, predictable and not much use...clearly a postscript, it's an afterthought, what you'd call a tick box from the bobby's point of view...sentence on the back, a paragraph if you're lucky, that's it, that's all the victim gets to express the effects it's had on them. And of course that would also be very immediate in terms of the allegation itself, whereas by the time it gets to trial you might have a few months in which if there's a psychological effect...any such effect could have magnified" (a solicitor advocate appearing at Courts A and B).

This particular respondents was very keen to present full details of the effect crime had on victims to the court at the sentencing stage, but was frustrated by the lack of detail he described in most VPS statements and the fact that – by the sentencing stage – victims were no longer on call to give evidence to this effect themselves:

> "You can explore [the VPS] in court as an advocate but for the fact that when you're presenting the evidence in a trial the defendant's not yet found guilty so you can't labour the effect on the complainant at that stage for fear of prejudicing the bench. So, to that extent, the victim effect is played down in the trial situation and once you then come to the idea of 'right, now we've completed, now we'll consider the effects on the victim' the victim's gone home, and is no longer able to play that evidence out or develop it in full" (ibid).

The fact that the victim is no longer present to be consulted on the issue may in part explain the trend noted earlier whereby less victim impact information seems to follow fully effective trials compared to cracked trials. The essential argument here is that VPS statements in their present form are never detailed enough to properly convey the impact of the crime to the court. As such, the only alternative this respondent saw was to actually have the victim give further evidence on the impact after the main trial. Of course, making the victim give evidence twice is hardly conducive to a victim-centred system.

The above notwithstanding, at the trial itself, many advocates explained that they would now routinely make some reference to the victim personal statement, even if the information therein was fairly limited (and assuming there was one):

> "I would highlight the stuff in it [the VPS]...and read [it] out and say what the victim says about the matter, otherwise they never get a voice do they?" (a solicitor advocate appearing at Courts A and B).

> "I've noticed more references...more recently – yeah – I think the prosecution are getting more adept at remembering to adduce this evidence when it's available" (a legal adviser at Court B).

> "The prosecution do now often give you a bit of information, a bit more, I wouldn't say we get lots but we get a bit more. So if the victim's made a victim personal statement, that usually is drawn to our attention" (a district judge sitting at Court A).

This leads us to the question of how the court has received victim personal statements and how (or whether) they are being used in the sentencing exercise. Again, because of the intended scope of this thesis, I myself was not present for many sentencing hearings, and the few that were observed did not contain any mention of victim personal statements. Nevertheless, many respondents at interview were convinced that judges and magistrates were indeed using victim personal statements and that, in the words of one court administrator:

> "There is no doubt the VPS statement has a powerful impact upon sentencing" (the District Legal Director at Court A).

In the Crown Court, one clerk described how many judges were now asking for details from the VPS. He also described several occasions where the survivors of homicide victims had written letters to the judges detailing the impact of the crime upon them and the judges had taken these into account. Certainly amongst younger advocates, the notion of including victim impact details at the sentencing stage seemed fairly well accepted into occupational cultures:

> "If someone's the victim of an assault I think it's very important, a judge will need to know for sentencing purposes what effect this has had on someone. I don't think it's as important for somebody to write 'and I think they should be made to pay' or 'they should go to prison for a very long time', I'm not sure where that takes us, but that does appear. What you want from a victim impact

statement[64] is '79 year old Dorris has been burgled', I want to know and I want to be able to tell the judge that her wedding ring that was taken – from her late husband – is something that she will never get over. And that is something I would say, because I think it's important. Likewise, you would want to be able to tell the judge that, yes, he got a bang to the head and has received treatment and has found it very difficult to sleep since. Because often you wouldn't, you'd just get, well, these are the injuries, a bang to the head, a six-inch cut to the head" (a barrister appearing at Courts A, B and C).

This extract reveals a great deal about the occupational practices and beliefs of at least one young barrister. Whilst the respondent was obviously very concerned about communicating victim impact details to the court, the (hypothetical) example he chose to draw on is clearly a textbook 'ideal victim'. It is also clear that the barrister was not supportive of victims having any kind of influence over sentencing, although we do learn here that victims' *opinions* as to the proper sentence are finding their way into the statements. The other point to raise here is that at the end of this extract the barrister is alluding to the very basic forms of 'victim impact' described above, which are necessary to prove a case and therefore do appear at the trial stage. Clearly there is indeed a real difference between *describing* immediate injuries (including psychological injuries) and truly addressing the *impact* of the crime on victims. As noted above, the trial process itself is still very much restricted to the former.

Nevertheless, sentencers themselves were clearly seeking out victim personal statements, at least in some cases:

"Quite frequently I have them read out to me, and I quite frequently ask, because there are obviously types of cases – cases of violence or dishonesty affecting elderly people – offences of violence in general I think it's useful to have a victim personal statement. And yes, it can be of significance, it can make a difference in certain cases, it can make the difference between a custodial and non-custodial sentence" (a district judge sitting at Court B).

"The sort of information I find particularly useful is in domestic violence cases where the parties are reconciled...that is important information to have because that should effect sentence" (a district judge sitting at Court A).

Clearly this suggests VPS statements can make a significant difference to sentencers. Nevertheless, shades of the 'ideal victim' are again surfacing here. In addition, it became obvious through talking to several lawyers and practitioners that judges and

[64] Despite the scheme being renamed 'victim personal statement' on its national rollout in 2001, the term 'victim impact statement' appeared to have stuck with many lawyers and court workers.

magistrates would first make a determination as to whether the type of case in issue was one in which a victim personal statement would be useful, and *then* move on to ask questions about victim impact. The drawback of this approach from the victims' perspective is that the cases in which victim personal statements will be called for by the bench will be limited by judges' and magistrates' present understanding of how different crimes may impact upon different victims. Hence, as one solicitor advocate pointed out:

> "The magistrates do their utmost to *try* and take account of the effect on the victim. But there are two factors there. Firstly I think the magistrates can imagine for the most part what the effects on the complainant would be...but they become case-hardened, they've heard so many cases of assault, they've heard so many people, that the effects of the assault tend to lessen on them the more that they hear" (a solicitor advocate appearing at Courts A and B).

In fact, the local Magistrates' Court Committee (before its replacement) had endeavoured to train magistrates on the impact of crime on victims. In particular, the Justices' Chief Executive described what he considered to be a very successful exercise by which a drama group had acted out the stages a victim goes through with the criminal justice system (receipt of different letters and so on) and the impact of different crimes. This has apparently galvanised enthusiasm within the local area to pilot the *No Witness No Justice* witness care units.

Nevertheless, the widespread view was in fact that Crown Court judges – as opposed to magistrates – were better at taking account of or seeking out the impact of crime on victims, or at least they were better at making it clear that they had done so to the court, and to the defendant specifically:

> "I can't say that the magistrates do [make enquires about victim personal statements], a judge would want to know. I've heard judges ask in the past 'is there a victim impact statement?' They want to know and they will actually ask that, I think you'll find most judges are on top of that...They do get it in [to sentencing remarks] which I think is important as well, and this is probably the purpose behind them that you want the judge to turn round and say 'this must have been terrifying for the victim, indeed they can't go out on their own any more, you think about that whilst you go away for the next 8 or 9 months' and that's what they'll say" (a barrister appearing at Courts A, B and C).

That said, in the magistrates' court, one district judge referred back to the lack of detail one tends to find in many victim personal statements as a limitation of their use in sentencing:

> "The only thing is, I don't know if they're prepared by police officers [but] they all sound a bit the same in the sense that they're all a bit obvious. If for example you've had your nose punched, then you're going to say it was very upsetting, I felt pain, it was a shock, I was off work two days. And you think – well – yes I sort of guessed that. They're very obvious things that they're saying – whether they could say anymore I don't know, but I just get the feeling that it's somebody asking them" (a district judge sitting at Court A).

This is an important observation because it seems to confirm that the manner in which victim personal statements are being taken by the police does in fact have a negative impact on their usefulness as sentencing tools. Indeed, given that many VPS statements seem to be more representative of a *lack* of impact on victims, one solicitor advocate said he would sometimes use them *in mitigation* when acting on behalf of defendants. The view of this district judge also seems to mirror that of the defence solicitor quoted earlier, to the affect that VPS statements sometimes seem to be coming as much from the police officers as the victims themselves.

For their part, a representative of the police informed me that there had originally been talk of creating a 'template' VPS statement for police offices to follow, but this had been abandoned on the advice that it would be restrictive for victims. In practice, however, it does seem that VPS statements are being completed in a fairly standardised way, just as lawyers themselves seem to conduct their own questioning in quite a prescribed, formulised manner.[65]

Finally in this section, some respondents made reference to the new proposals (now being piloted) to introduce victims' advocates. The proposals were met with a certain degree of unease amongst many lawyers, with one defence solicitor branding them "a dangerous extension" of the victim personal statement, especially in relation to victims speaking themselves in court:

> "Isn't that a step too far? I think it is. It's quite right that something about the impact of the crime should be taken into account in the sentencing process, but emotive – highly charged – pleas from someone who might have had a very torrid time? I think [that] isn't part of our process" (a defence solicitor appearing at Courts A and B).

A particular concern voiced by lawyers on this point was the inequality such a system would produce between more articulate and less articulate victims:

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[65] See above.

"Does it mean that if you get a particularly able speaker – who is Laurence Olivier or something – comes into court and tells you [about the impact of crime] do you sentence that defendant [differently] than somebody's who's victim was able to say very little?" (a district judge sitting at Court A).

"It's very difficult to know how you do get a fair regularising of it. Because you might get someone who's extremely subtle and articulate and who pitches it at such a level that it has a massive impact. And yet you might get the bloke who can't string two words together who really has a much more genuine problem as a result of the crime having very little effect on the sentencing" (a defence solicitor appearing at Courts A and B).

Interestingly, the district judge quoted in the penultimate extract also made reference to confusion similar to that experienced in the victim impact statement pilots, as to whether the new victims' advocate system was intended to have some impact on sentencing, or whether the intention was simply to allow the victim to feel they have had 'their day in court':

"If the main intention is to allow the victim to have their say – if they wish – because they will at least feel they have had a voice, then I think you can understand that. I can understand how it must be frustrating sometimes – particularly in the Crown Court – where they are often lengthy cases and they've sat there for days and days and days and heard all this evidence, some of which they probably wouldn't have agreed with, or it might have been critical of their loved one, and they've not been able to have a say, and it's almost as if they've not been there, and I can see that. But I would be wary of it affecting the sentencing" (a district judge sitting at Court A).

One final point to note about respondents' reactions to victims' advocates – in their suggested form whereby existing advocates take on the role – was that most lawyers believed it would be a very unpopular job professionally, and that few barristers in particular would want to become involved in this type of work.

Overall in relation to victim impact, as with the advent of special measures there was little argument amongst most practitioners that this was a positive development in theory. Once again, however, the real debate came with the practice; both in terms of how VPS statements should be taken, and the use made of such statements in court for different kinds of cases. Clearly, lawyers from all sides of the adversarial system were very wary of allowing 'emotionally charged' details or opinions into the sentencing process, and certainly the trial process. More generally, there was again an impression that victim impact is mainly being emphasised in cases involving stereotypical or ideal

notions of victimisation, which is problematic because it can only serve to reinforce amongst sentencers traditional notions of how crime impacts upon 'all kinds' of victims in 'all kinds' of cases.

6.3 – VICTIMS AND WITNESSES AFTER TRIALS

After giving evidence, it was common practice at all three courts for either the magistrates or the judge to inform a victim or a witness that they were free to observe the remainder of the proceedings from the public gallery. Very few witnesses from the prosecution or defence chose to do so, and this was, if anything, less common amongst victims themselves. In fact, usually the only reason witnesses would wait in the public gallery was to see/support a relative or friend about to give evidence, after which both parties would leave. Only a handful of victims or witnesses stayed in court specifically to watch the trial through to its conclusion. Slightly more defence witnesses did so, but again this largely seemed to be because they were supporting the defendant. These trends were broadly similar across all three courts. One solicitor advocate pointed out to me that the Witness Service had a policy of actually suggesting witnesses did not stay in the public gallery to watch the remainder of the case, although this was never confirmed.

One particular practice amongst advocates relating to victims giving evidence through special measures is worth recalling here. Having given evidence from behind a screen or through a video-link, on the few occasions where it occurred many advocates were somewhat nonplussed to see the witness or victim coming into court to observe from the public gallery. Indeed, this was usually pounced upon by the defence – before magistrates and juries – as evidence that the victim could not have been as intimidated as she perhaps claimed. Hence, by giving evidence through special measures many witnesses effectively traded in their right to observe the proceedings. This is interesting because it provides an example of a measure intended to assist victims and vulnerable witnesses being adapted for use *against* them.

What was clear, however, was that even at the magistrates' court watching an entire trial would have been quite a commitment for the average victim:

Table 50: Length of trials at Courts A and B

	n*	Average trial length (hh:mm)	95% confidence intervals for average length of trials (hh:mm)		
			Lower bound	Upper bound	Range
Court A					
Effective trials	49	03:57	03:10	04:43	01:33
Ineffective trials	24	00:27	00:14	00:39	00:25
Cracked trials	35	00:28	00:19	00:38	00:19
All Court A proceedings	108	02:02	00:33	02:32	01:59
Court B					
Effective trials	46	03:56	03:18	04:35	01:17
Ineffective trials	25	00:25	00:07	00:44	00:37
Cracked trials	37	00:32	00:21	00:42	00:21
All Court B proceedings	108	01:57	01:31	02:23	00:52
Courts A and B					
Effective trials	95	03:56	03:27	04:26	00:59
Ineffective trials	49	00:26	00:15	00:37	00:22
Cracked trials	72	00:30	00:23	00:37	00:14
All Court A and B proceedings	216	02:00	01:41	02:19	00:38

***Numbers exclude trials for which the final length was unknown.**

It is interesting to note the similarity of the figures here between the two courts for the same classification of proceedings. Of course, at the Crown Court centre trials would go on for days or weeks, and it would be almost impossible for a victim to sit through the entire process.

The fact that the victim is so rarely present at the end of a trial to see the outcome has a number of implications. Firstly, one might seek to question the point of judges or magistrates expressly mentioning the impact of crime on the victims – and the effect on sentence – if the victim is not there to appreciate it. Of course, in a victim-centred system the answer must surely be that this provides both a symbolic gesture (a recognition of the hurt caused to the victim) and a means of educating practitioners on the importance of adducing and taking into account this kind of evidence, and how it will be used in sentencing. In heavily media-covered trials, of course, the need to express such information is more obvious given that the victims themselves can therefore 'observe' remotely, and also if Garland (2001) and Boutellier (2000) are right that this gives legitimacy to the criminal justice system in the eyes of the public.

Given the absence of the victim, another important question is how victims are to be informed of the outcome of a case when they are not there to witness it. Indeed, even if the victim is present, he or she will probably need some degree of explanation. One

representative of Court B made it very clear that – in his view – passing on information should not be the court's responsibility:

> "I don't think it's the court's role, because I think the court would be at risk of affiliating itself too closely with the witnesses" (a legal adviser at Court B).

This being the case, we have already noted in Chapter 4 that responsibility for contacting victims and witnesses has essentially been given over to the CPS and the joint police/CPS witness care units. As such when victims – or prosecution witnesses – were still present at the end of proceedings at the magistrates' court, most prosecution advocates said they would usually explain the results to them after the trial, and such explanations were observed taking place many times during the observation sessions at Courts A and B.

In fact, because ineffective or cracked trials were usually resolved far more rapidly than fully contested (effective) trials, for these cases in particular prosecutors in the magistrates' court would often spend some time explaining the outcome to the victim and prosecution witnesses. This was particularly necessary, because ineffective or cracked trials would often raise puzzling concepts like 'bind overs' or 'plea bargains'. It has to be said that not all advocates took this role gladly:

> "As a barrister briefed just for that trial you can often be perceived as a scapegoat – 'you're the person who can go and explain this'. Now I've never liked doing that, I've never liked going and explaining [to victims and witnesses] and saying 'look, really it isn't your decision but this is what has happened, and what do you feel about it?' but we're encouraged to do so" (a barrister appearing at Courts A, B and C).

As noted earlier in this chapter, the view expressed here in relation to 'scapegoating' was actually fairly common amongst disgruntled agents working on behalf of the CPS, both barristers and solicitor advocates. The feeling seemed to be that the CPS reserved for agents the cases in which a high degree of victim or witness contact work would be necessary, rather than having the Crown prosecutor who had dealt with the case from the beginning 'face the victims' herself. This same respondent was also very clear that the same task would not fall to him in the Crown Court, where he would again rely on CPS caseworkers to pass on the information and explanation to waiting victims or witnesses. We also see here the clear view that the form of disposition a trial takes on the morning is not the victim's decision.

Nevertheless, it was clear that many criminal justice practitioners had come around to the idea that victims and witnesses should receive information and full explanation of the outcomes of 'their' cases even if they had not been present for the whole trial:

> "One of the things I do think might be helpful is the feedback to victims or to victims' relatives, so that as well as explaining to people before coming to court how they will be in court and how they will be asked questions, they also get proper feedback at the end. Because I think a lot of the unhappiness and criticism of what goes on is a complete lack of knowledge or understanding – and I don't mean to criticise, why should they know? – of what the court has done, is able to do, or whatever" (a district judge sitting at Court A).

In the case of non-effective trials, it was confirmed by the CPS Chief Prosecutor that they would send a letter to the victim soon afterwards explaining the decision. These letters were written by staff at the CPS 'victim information bureau' based on notes left by the prosecutor making the decision in question. Whilst such letters would contain some fairly standard paragraphs, they were not 'pro forma' letters:

> "It's the tone...[they] can write a sensitive letter in plain English" (the Chief Crown Prosecutor).

Before being sent, such letters would then be forwarded to the lawyer who made the decision to drop the case for amendment and to be signed, hence the letter was directly 'from' the relevant prosecutor. In some cases this too was a bone of contention as in one ineffective trial where the complainant had arrived at court heavily intoxicated, the Crown prosecutor expressed some frustration at being obliged to spend time writing a letter to her explaining why the case did not proceed.

In addition, I was told that all witnesses would receive a letter from the joint CPS/police witness care unit informing them of the outcome of the case they had been involved with. The WCU was also able to refer victims on to organisations that could provide victims with further help and support if necessary, including REFUGE and Rape Crisis. Whilst this of course may have all been theory and good intentions, the manager of the witness care unit was confident that such information and support mechanism were indeed operating in practice.

6.4 – *TOO* VICTIM-CENTRED?

Whilst the tone of this thesis has very much been one of a criminal justice system 'becoming' victim-centred, it is worth also reflecting on the view expressed by many

defence solicitors – and several other more 'neutral' respondents – that the criminal justice system is in fact already too concerned with the victim (and the prosecution in general) at the expense of the defendant's rights and expectations. This of course reflects wider arguments discussed in Chapter 4 that victim policies may have been partly driven by a more punitive agenda.

Special measures and the Witness Service – or rather the *unequal application* of these support mechanisms – were often cited as examples of the system's gradual 'swing' in favour of the prosecution:

> "I am not at all keen on the current fairness in relation to trials of young persons. I find it quite difficult when I know that a complaint or child witness is using the video-link, they're shown all round the courts. I've heard observations made by witness support as to how it won't be a real problem; they're not in the court. And I have a defendant who might even be of younger age, and they get nothing...The poor defendant has to stand up in court. He may be equally as nervous and if one is talking about the presumption of innocence it seems to me irreconcilable that so much is done to help a complainant and yet the defendant has to go through the whole ordeal, I don't accept that" (a defence solicitor appearing at Courts A and B).

As far as the present research went, none of the 39 witnesses giving evidence through special measures were defence witnesses.

The other main source of contention for those with similar views were the hearsay and bad character provisions under the Criminal Justice Act 2003[66], which came into force during the period of these observation sessions. Whilst technically such provisions might also work in the defendant's favour – by adducing the bad character of prosecution witnesses and victims – in practice many respondents again felt that this was unfairly tilted towards the prosecution:

> "Now with all this allowing hearsay, allowing previous convictions and all that – I've got problems with it. Because if you've got a child violator who's got six previous convictions, I think it is important that juries know about it, I'm sorry to say, in many way it goes against my grain because I still believe in a man's right to a fair trial...But it worries me because anybody with any form [previous conviction] for anything, they're throwing it in now, prosecution are applying to get it in on the basis that 'well, it's relevant, it's relevant because it shows what a lying bastard he is' that frightens me a bit. Hearsay rule, that's appalling! That should never be allowed!" (a defence solicitor appearing at Court B).

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[66] See Chapter 4.

That said, there was a general acceptance amongst many lawyers that the hearsay rules had been slackened long before the 2003 Act:

> "We've gone that way anyway. The hearsay rule is all but obsolete in many respects. It used to be 'it's hearsay we'll stay well clear'. We're now told 'hearsay, I'm going to get this in, the question is *how* am I going to get this in?' Hearsay has changed quite drastically" (a barrister appearing at Courts A, B and C).

One solicitor focused not so much on the more sweeping measures of the 2003 Act themselves, but instead remarked that the *administrative* hurdles that went with the provisions of the Act – such as the need to comply with time limits – were counterproductive to the interests of justice:

> "All these things used to be resolved on the day of the court. That was a clean, quick efficient way. But *now* you're going to get cases whereby if you don't raise this within so many days your defence is gone. The problem is, what you're saying is, you're gonna' get a fair trial providing there's no human error" (a defence solicitor appearing at Court B).

There were also solicitors who commented specifically on the apparent 'punitive' trend in criminal justice policy generally:

> "I think that there's a view abroad that if we're harder on crime then we can reduce it, and I don't believe that that's right. I think you have to address the underlying causes...I certainly don't accept that things like the bad character provisions in any way improve our judicial system. I just feel that – as they are currently framed – it's almost a licence to introduce matters which don't go evidentially to the core of the case" (a defence solicitor working at Courts A and B).

> "It's affecting people's right to a fair trial in some situations...I rather naively thought when these [bad character] provisions came into force that the CPS wouldn't use them very much in the magistrates' court, because for me it's a sledgehammer to crack a nut sometimes, but some of them were like children in a sweet shop!" (the District Legal Director at Court A).

Aside from the punitive nature of recent policies, a very common bone of contention amongst lawyers from all sides of the adversarial process was simply the *amount* of reform and legislation coming into force very rapidly over recent years. Here the implementation of the Criminal Justice Act 2003 proved fertile ground for critique:

> "It's bang-bang-bang, let's have another initiative, another Act. In the last 15 years you look at the number of Criminal Justice Acts there's been for everything,

and how many new orders there's been, and how many initiatives there's been. And it's all political at the end of the day. And it's like everything else – and we know that from life history – there's no money there to make sure it runs properly" (a solicitor advocate appearing at Courts A and B).

Of course, here we see a reflection of the critique introduced in Chapter 4, that the centre seems unwilling to take responsibility of these forms, hence the funding must come from existing local resources. The disgruntlement of practitioners continued:

"In the Crown Court, Crown Court judges are asking defence counsel, 'do you understand this [the Criminal Justice Act 2003]?' Because they don't know, they don't understand it. It's so bloody complicated it disappears up its own arse in certain areas, it's very poorly done, it's a cheap job" (a defence solicitor appearing at Court B).

"We've had such a lot of information in such a short space of time as well as a new way of working with a new computer system...we just got a load of e-mails about it" (a court clerk at Court C).

The problems this caused were highlighted at the magistrates' courts, where legal advisers had training on the Criminal Justice Act 2003 the day *after* it came into force.

We can link this issue of the system becoming too victim-centred – or at least too *prosecution*-centred – to our discussion on the Witness Service, and how they rarely dealt with defence witnesses. Indeed, the general lack of facilities for defendants and defence advocates at all three courts was raised by a number of respondents. Departing from the research results for a moment, this actually appears to be an internationally recognised problem, with arguments at both the International Criminal Tribunal for the Former Yugoslavia (Lynch, 2006) and the International Criminal Court (ICC, 2006) that defendants are being poorly served by court facilities compared to victims.[67]

The above notwithstanding, it is clear that most (although not all) of the views expressed to this researcher which suggested the system is becoming biased in favour of the prosecution came from defence solicitors. As such, we might do well to bear in mind the reaction of one court clerk on having such views described to him:

"Well, solicitors would say that wouldn't they!" (a court clerk at Court C).

[67] My thanks to Katja Samuel of the University of Sheffield for alerting me to this point.

The same clerk noted that the Effective Trial Management Programme had led to a lot more trials being heard in defendants' absence as of late, when previously this was almost never done. Nevertheless, in his view this did not indicate the system was becoming in any way 'stacked' against defendants.

At the magistrates' courts, legal advisers too were less convinced by the defence solicitors' arguments:

> "I think it can *look* like to an outsider that it's all against defendants, but in process this court remains impartial, yes we've got bad character [provisions] but – as I say – we're not getting an increased conviction rate " (a legal adviser at Court A).

> "I'm not necessarily sure that defendants are getting such a bad deal...I think it's maybe swings and roundabouts" (a legal adviser at Court B).

Of course, perhaps more so than for any other issues raised in this chapter, it is important to be mindful here of the relative positions of each of these respondents. Clearly defence solicitors have a stake in maximising benefits and rights afforded to defendants, whereas court legal advisers and clerks must maintain an air of impartiality and fairness. As such, it is perhaps fitting to end this section with a frank admission from another defence solicitor:

> "You see, all our respective views are coloured by where we're sitting" (a defence solicitor appearing at Court B).

6.5 – PUTTING YOURSELF 'IN THE VICTIM'S SHOES'?

The sentiments of the defence solicitor quoted just above pre-empts one final point to be made in this chapter. The purpose of this chapter has been to address both the practice of running criminal trials, and also the culture of those who run them. On this latter point, it is worth emphasising that many of the legal practitioners and administrators interviewed for this research demonstrated an ability to put themselves in the shoes of victims and witnesses, and to try and see the system from their perspective:

> "If you put yourself in the position of someone attending court as a witness, and try and look at it from that perspective" (the Justices' Chief Executive of the local Magistrates' Court Committee).

"Certainly if I was involved in anything as a victim – if I was involved in a car crash or something – I wouldn't want to be walking to court with the defendant" (the Clerk to the Justices at Court A).

That said, during this investigation there was often a stark contrast displayed during the interviews and observation sessions between how lawyers *spoke* about victims and their *actions* during actual criminal trials. This seemed to reflect a conflict between 'new' ideas of victim-centeredness and more engrained notions of how criminal trials 'ought' to operate, and what is and is not 'the lawyers' job', especially when it came to prosecutors. Take, for example, these two extracts from notes at two different trials and concerning different lawyers:

"The defence lawyer is saying again quite forcefully that the 12-year-old witness (female) shouldn't be made to give evidence → even through video-link → [the lawyer] notes that there is always a problem finding witnesses for domestic violence cases" (note taken at trial 157).

"During the break the prosecution lawyer said [that] breaking down into tears was the only 'good thing' the prosecution witness did for the case" (note taken at trial 59).

In the first extract, the defence lawyer showed concern for a vulnerable witness about to give evidence and thus demonstrated a degree of sympathy largely unseen in previous studies of this sort. Through multiple observations like this it became apparent that legal occupational cultures have altered to the extent that lawyers are now willing to *talk* about victims and show sympathy to them more readily than appears to have been the case previously. When it came to actual trials, however, the *practice* of many lawyers seemed to frustrate such sentiments, and opinions like that demonstrated in the second extract were prominent, with the tactical reality of winning the case overshadowing any concern the prosecutor may be feeling for the prosecution witness. This may reflect a wider, and in general still prevailing, legalistic culture.

As an aside, it is worth noting from the first extract given above that the defence lawyer's show of concern for a 12 year-old prosecution witness may itself have been a tactical ploy, for clearly he had a professional interest in the witness not giving evidence against his client. Nevertheless, even if this were the case, this note still illustrates how lawyers are now willing to express these kinds of sentiments when previously they were not. Indeed, it may indicate that 'concern for witnesses' has become more deeply

engrained in professional practice than it first appears, such that lawyers are now factoring this feature of trial work into their overall strategies.

As with any body of professionals, departing from established practices (in the running of trials) could result in a lawyer being ostracised by colleagues. On one occasion this had a direct bearing on a prosecutor's treatment of victims (and defendants) when – following a cracked trial – he had arranged for the defendant and victim to shake hands in the corridor outside the court. This had met with some disapproval from the agent defence counsel, who I subsequently heard passing the story on (replete with disapproving sentiments) at several future trials. A similar fate befell any lawyer who departed too greatly (or 'eccentrically') from established trial norms, which helps to illustrate why traditional and deeply engrained notions of legal practice which are not conducive to victims' needs are nonetheless difficult to eliminate from lawyers' individual occupational cultures. On the one hand, we might attribute this position to the very close-knit nature of the social world I encountered at individual courts, and the only slightly wider social/cultural network of legal practitioners in the geographical area as a whole. In the wider sense, however, such actions on the par of individual lawyers would have been contrary to the established tenets of legal culture as a whole.

Of course, some respondents admitted that – as professionals – they were probably unable to see the system from the perspective of victims or witnesses:

> "I don't know how it comes across, because I sit on the other side – it's normal to me because that's how it was done – I've never been a witness in court proceedings, if I was a witness in court proceedings I'd have a different view" (a legal adviser at Court A).

Like this final respondent, we might question the ability of seasoned court professionals to put themselves in the place of victims coming to court to give evidence, or for whatever other reason. Nevertheless, we might also pre-empt the conclusions draw in Chapter 7 by observing that if the occupational culture of advocates, administrators and other legal personnel has in fact adapted to the point where they are now able to at least *attempt* to take a 'victim's eyes view' of the criminal justice system, this can only bode well for the achievement of a truly victim-centred system, to which we will now turn in the final chapter.

CHAPTER 7: VICTIMS 'AT THE HEART' OF CRIMINAL JUSTICE: A DISCUSSION

This project has brought together data from a range of sources (courts, lawyers, administrators, policy-makers, policy documents) using a variety of methods (observation, interviews, surveys, quantitative analyses). Throughout, the underlying goal has remained to cast light on the government's contention that it is putting crime victims 'to the heart' of the criminal justice system. As proposed in Chapter 1, the criminal trial is arguably the central process within the system, if not in terms of sheer numbers or volume of work, then certainly in terms of symbolic and emotional significance for those involved in the process and for the public in general. In addition, most other criminal justice processes operate in anticipation of or directly result from a criminal trial. As such, it is argued that by focusing – as this study has – on criminal trial procedure we can learn a great deal about the practicalities and realities of the wider pledge. In Chapter 1, the investigation of that pledge was broken down into three key research questions, which are worth repeating here:

1. What would it mean to put victims 'at the heart' of the criminal justice system?

2. What is driving this 'policy'?

3. What has putting victims 'at the heart' of the system meant so far *in practice*?

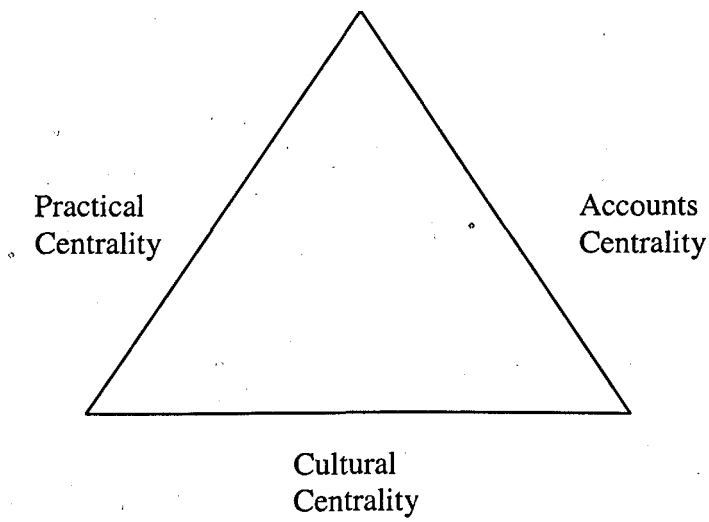
This chapter will now examine how the issues and results presented in Chapters 4-6 relate to these three questions, tackling each in turn.

7.1 – WHAT WOULD IT MEAN TO PUT VICTIMS 'AT THE HEART' OF THE CRIMINAL JUSTICE SYSTEM?

With our focus on criminal trials, the above question can be readily translated into 'how would a victim-centred criminal trial differ from the proceedings we have now?' This is obviously a key issue and also, I would argue, a multifaceted one. As such, the answers can (and must) be drawn collectively from all the research data acquired during the course of this project.

This being the case, I will suggest in this chapter that the 'victim-centred' nature of a criminal trial can be separated into three interrelated forms of 'centrality' illustrated on Figure 2. Later – in accordance with our discussion in Chapter 3 – I will argue that the way to achieve or enhance all three forms of victim-centrality is to afford victims internally enforceable rights.

Figure 2: Proposed model of victim-centeredness



My basic argument is that these three forms of centrality are interrelated and, indeed, dependant on one another, hence the choice of a triangle. Each component of this triangle will now be described in turn although – given the close relationship between them – some degree of overlap is inevitable. In addition, whilst some critique of the existing system will be made at this stage as a means of illustrating points, the main critique will be saved for our discussion on the final research question below.

7.1.1 – Practical centrality

During the course of the last chapter, it became clear that many of the biggest problems and annoyances faced by victims in the criminal trial procedure are grounded in very practical concerns. As such, a truly victim-centred criminal justice system would be one that fully addresses such problems and is systematically organised, administrated and run with these practical considerations in mind. Of course, the issue of funding permeates the entire concept of practical centrality, as money is always needed to provide the necessary facilities and staff. This becomes especially problematic in the face of the suggestion made in Chapter 4 that lack of central funding for such initiatives

may reflect unwillingness on the part of the government to truly take responsibility for victims. In a purely victim-centred system, such funding would be steady and plentiful enough to achieve all these ends. As we saw in Chapter 4, however, the reality is somewhat different for many local criminal justice and associated voluntary agencies

Referring back to the established literature, the notion of 'practical centrality' appears fairly uncontroversial, as it would essentially amount to what Andrew Ashworth (2000) calls 'service rights'. We have seen Sanders et al's (2001) view that these are essentially unobjectionable in principle to most commentators. We have also seen evidence from the Witness Surveys (Whitehead, 2001; Angle et al., 2003) and the wider literature (Maguire and Bennett, 1982; Shapland et al., 1985) that much of what victims seem to require from the criminal justice system amount to service rights, such as the facilitation of information and basic courteous treatment. Nevertheless, we have also noted that commentators tend to rely on a standard list of 'service rights' without further deconstruction of the issue (JUSTICE, 1998) or its specific application to the evidential process. As such, the following discussion proposes 'standard' service rights in the form of information (booklets, help desks, signposting etc.) and physical facilities (waiting rooms, seating, a cafeteria) whilst also emphasising the 'services' to be afforded to victims giving evidence, and the reform of administrative and operational practices to better suit the needs of the victim.

To begin our discussion, one obvious example of such operational practices would be ensuring a court has sufficient resources at its disposal (in terms of space and personnel) to run trials around victims' availability, rather than fitting the victim in around the conflicting schedules of court work and the allocation of staff and judges. For its part, the CPS would have an organisational and resource role here too in providing enough prosecutors or agents to meet demand. This suggests an end to the double-listing of trials where victims might attend to give evidence. As we have seen in Chapter 6, at best this system leads to extended waiting times, and at worst it results in the victim being sent home, with another case taking priority.

Of course, we also noted in the last chapter that the magistrates' courts presently could not do without a double-listing system. Nevertheless, practical centrality would imply always having the facilities on standby to run proceedings at a victim's convenience if the alternative meant sending the victim home and adjourning the trial for a period of weeks or months. As such, the solution to this dilemma is not simply a case of

increasing the capacity of courts or the CPS to run trials, but increasing the *flexibility* of court and personnel scheduling so that lists can be changed quickly to meet victims' availability needs. In other words, whilst this is a resource question, it is not predominantly an *economic* question of increasing resources, but rather one of adapting organisational structures. Thus, in a genuinely victim-centred system, any case of a victim being practically (and perhaps emotionally) inconvenienced through being called to court needlessly would constitute a failure.

One way to avoid such difficulties is to ensure that any problems inherent in a case are flagged up early – long before the day of the trial – so that the trial can be removed from the list and the victim de-warned. We have seen how this has been attempted through the new Effective Trial Management Programme and case progression ('pre-trial review') hearings. Nevertheless, we have also seen that magistrates' court benches in particular can be unwilling to enforce the case progression process, so the practical issue becomes one of educating magistrates and district judges to ask relevant and probing questions of prosecutors and defence advocates in the run up to a trial. In other words, benches must be persuaded (or required) to take a proactive hand in case management.[1] The fact that issues like special measures and bad character applications were still commonly arising on the morning of the trial in the observation sessions suggests this is not consistently achieved (see Jackson, 2004).

Of course, the key to achieving the practical centrality of victims also lies in the various agencies having effective systems of communication in place, allowing information to be freely and efficiently shared between them. This should ensure that necessary details or paperwork are always to hand when a case comes for a review hearing before the court. From the CPS perspective, assigning one prosecutor to follow a case from start to finish (as suggested in the last chapter) would be a step forward. More generally, we have seen that the success of the Effective Trial Management Programme relies on the appointment of proactive and resourceful case progression officers who are willing, for example, to contact agencies to ensure the case is proceeding as planned and all the information is up to date. This is especially important when dealing with information on

[1] Which – like many of the propositions suggested in this section – is also a question of addressing culturally-engrained occupational practices and, crucially, providing training to the judiciary and magistracy to address such matters, see below. Criminal Procedure Rules came into force on 4th April 2005 that, for the first time, give benches explicit powers to manage the progression of criminal cases. The Rules generally apply to all criminal matters appearing in the magistrates' and Crown Courts and the criminal division of the Court of Appeal.

the availability of victims and witnesses, which must also be proactively canvassed at review hearings. We have seen that the Witness Service can have a role at this stage in asking victims whether they are going to attend court, albeit this raises questions of whether their role is being subsumed with that of increasing efficiency in the system. In addition, we saw in Court C that the case progression officer was fettered by a presumption that solicitors would not start preparing a case until two weeks before the trial. Whether the reality of this is based on practicality, culture, or tactics on the part of defence advocates and defendants is difficult to discern[2], but in any case such a presumption would need to be addressed in a truly victim-centred system.

Practical centrality also means having the facilities and resources in place to keep victims and witnesses informed as a case progresses toward trial. The witness care unit and/or the CPS victim information bureau are obvious candidates for providing such information to victims. It is perhaps equally important, however, that such bodies maintain clear avenues of communication and information-sharing between them. Indeed, as noted by the manager of the witness care unit in the area under review, it would be more practical for these two bodies to be joined, and more generally for the police and CPS to share administrative systems so that information can readily be passed between them electronically.

Keeping the victim informed before the trial also means forging links with outside support agencies, to which victims in need of specific help can be referred. We have seen how this can be particularly crucial in the case of domestic violence victims. It also of course means keeping the victim up to date and informed about the process they are about to go through, which means sending them the trial date promptly or, more ideally, *canvassing* the trial date with them at the earliest possible opportunity. This is represented in the new witness availability section of the standard witness statement (MG11) form. At the same time, victims should be given information about the location of the court, public transport links and *realistic* details about the trial procedure itself. By 'realistic' I mean details that prepare victims for some of the less straightforward aspects of coming to court, such as the purpose of giving evidence, the process of cross-examination and the likelihood of delays, all of which are presently omitted from leaflets and online walkthroughs. At the same time, victims should also be offered a court familiarization visit in advance. Of course, practical centrality also means

[2] Although this author suspects the latter two interpretations.

ensuring the organisation and administrative systems (and the funding) are in place to guarantee that such services are offered consistently and automatically to all victims, not just in courts with an especially pro-active Witness Service.

On the day of the trial itself, we have already noted that courts in a victim-centred system would clearly provide all the usual facilities. These will include cafeterias, seating, signposting and – unlike Courts A and B in this study – adequate car parking. It would also mean ensuring the victim knows where to go and understands what is going on at all stages of the process. Hence, when a victim first arrives at court he or she would be immediately directed to the on-site Witness Service, or preferably taken there by arrangement with the security officers, or met by Witness Service volunteers themselves. In the case of more vulnerable or intimidated witnesses, practical centrality would also mean having the capacity at a court to bring witnesses in via a back door if this were necessary to avoid the defendant and/or defence witnesses.

Once at court, the lines of communication between victim and courtroom in this system would be well established and efficient. Ideally, this would mean prosecutors themselves keeping the victim directly informed about developments on the morning of the trial. If the prosecutor is prevented from taking such a hands-on approach[3], the Witness Service volunteers or CPS caseworkers would be well placed to offer regular updates and to collect victims' statements to be reviewed before they give evidence. Indeed, practically we noted the view in the last chapter that the Crown could no longer operate without the assistance of the Witness Service. Locating witness waiting rooms somewhere near the actual courtrooms could help facilitate such assistance.[4] Witness Service volunteers should also be willing to approach advocates, legal advisers and clerks[5] directly in order to gather this information and, for their part, legal advisers and clerks would be kept up to date so they could relay the information. That said, the lines of communication should not become too convoluted, with information being passed on (as in Crown Court C) from prosecutor to clerk to CPS caseworker to Witness Service volunteer to victim. Of course, in cases of long delays or ineffective and cracked

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[3] In the last chapter we have noted how the double-listing system can leave prosecutors with less time to speak to victims and witnesses.

[4] As in Court B, although it might bring the disadvantage that the defendant could be waiting close by.

[5] We saw in the last chapter that volunteers were generally less willing to approach Crown Court clerks as opposed to magistrates' court legal advisers.

proceedings, some explanation would be offered directly from the bench[6], who would proactively enquire about waiting witnesses.

If pre-trial review processes operate effectively, waiting times should be significantly reduced. However, if victims were forced to wait for any significant time in this system, they would be allowed to leave the court building, thus avoiding the impression of being 'trapped. In such cases, the court would have the facilities in place to either page or text these victims when it was time to return. The staggered calling of witnesses could also be employed to this end, especially in cases where it was known that legal arguments would precede the actual trial. Families of witnesses would probably inevitably still arrive at court together, but this would be their choice and the notion of staggering implies more of the 'appointments-based' culture found in other public services. If the victim were happy to stay at court, then *comfortable* waiting facilities would be provided.

On giving evidence, key procedural aspects of a victim-centred trial should include offering victims and witnesses the opportunity to sit, and affording them breaks as and when the victim requires them. Victims would of course be afforded all the social niceties, including calling them by their names and thanking them afterwards. Practically, it is important that a courtroom is designed so that the witness is neither looking at nor standing/sitting particularly close to the defendant or the public gallery where the defendant's supporters may be seated. The witness box should also be free of any complicated or confusing equipment, such as the object that looked like a microphone (but wasn't) attached to the witness boxes at Court C.

When giving evidence, one specific practical issue is the noting that is done in the magistrates' court, we have seen in Chapter 6 how this can cause the victim to be stopped and started by lawyers trying to keep up. In a genuinely victim-centred system, the practical facilities would be available to avoid this either by recording victim evidence or, as in the Crown Court, noting it through stenography.

When dealing with victims giving evidence through special measures, practical centrality implies the provision of effective equipment that in no way complicates the

[6] On which, see 'cultural centrality' below.

experience for the victim, or indeed interferes with the judicial process.[7] This means a high standard of video and audio, and a proficient operator. In the case of pre-recorded examination in chief, police officers should be fully trained in the process and the challenges presented by children giving evidence. Ideally, screens should be built into the courtroom to reduce confusion, delay, and the debates seen in Court A over where to position them. Of course, on the issue of special measures, procedures would be in place from very early on in the criminal justice system to ensure that the victim's need for such facilities is flagged up. We saw this reflected on the M2 witness evaluation form[8], which will help both the victim and the court to prepare and should again reduce the need for last-minute, time-consuming, applications which keep victims waiting.

Courts themselves would have the facilities to edit evidence tapes swiftly and effectively. To help address the concerns amongst some lawyers regarding the effect of video-linked evidence on magistrates and juries[9], clear directions/training should be provided to both; indicating that special measures are a very normal way of giving evidence and do not imply anything about the defendant. Juries should also be directed to have as much regard to pre-recorded evidence in chief as the live cross-examination.

In Chapter 5 I argued that, in order to integrate a victims' full account, the victim-centred criminal justice system must be organised to incorporate the impact of crime on victims. In accordance with existing case law (Shapland, 2002) this should be taken into account at the sentencing stage.[10] Practically, this may mean training police officers in the taking of victim personal statements and ensuring they can (and do) explain their purpose to victims.[11] Another possibility suggested in the last chapter would be to have some other agency take victim personal statements, leaving the police to concentrate on pursuing the prosecution. Whichever body were responsible for these statements, systems would also be in place to contact victims sometime after the initial statements were taken to ask whether they wish to change them or make further 'stage two' statements. Possibly, no agency at all would need to 'take' statements from victims, but

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[7] Here I am thinking of the large and cumbersome video-link screens in the Youth Courts at Court A that were the topic of so many complaints amongst magistrates.

[8] Assuming it is not used to *force* special measures on victims, see 'accounts centrality' below.

[9] Once again a cultural issue to be discussed below.

[10] Which we will discuss in greater detail when we come to talk about 'accounts centrality'.

[11] The British Crime Survey indicates that victims are asked by the police about their injury or loss in 52% of incidents (Ringham and Salisbury, 2004).

facilities could be provided for them to send statements to the court themselves or perhaps upload them online. Of course, lawyers themselves would also need to be educated on the impacts of crime on victims.

Following a criminal trial, mechanisms would be in place to both relay information about the outcome to victims and also refer them on to any other voluntary organisations that might assist them.

As we are presently considering the *practicalities* inherent in a victim-centred system, it is also worth emphasising that victim-centred criminal justice should not be inundated with reform to the extent that agencies or advocates cannot keep up with their training or familiarisation with new developments. Furthermore, whilst the system I have outlined here is arguably an efficient ideal, none of this represents truly fundamental reform to the present system. For the most part, the measures being advocated here are developments of existing practices, or will simply ensure existing mechanisms are able to operate as intended. Hence, in keeping with one of my original hypotheses in Chapter 1, my proposal is that victim-centred criminal justice can be achieved without fundamentally changing the existing system. As such, practical centrality is probably the least controversial and most readily achievable component of the victim-centred model described in Figure 2.

7.1.2 – Cultural centrality

Whilst practical centrality is clearly integral to the operation of a truly victim-centred system, it perhaps does not take us much beyond existing notions of victim 'service rights', albeit in a deconstructed form. Probably the greater challenge will lie in achieving real and self-perpetuating changes in the underlying occupational cultures of criminal justice practitioners and court staff, such that victims are treated as people (with stories to tell) rather than sources of evidence. Of course, this may necessitate a change in the local cultures of individual courts as well as the wider legal culture of lawyers as a whole. Indeed, it is important to realise that practical issues like those outlined in the last section will not achieve victim-centred trials without the associated cultural changes.

To provide a basic example of the importance of culture; physically providing separate waiting rooms for prosecution witnesses will do little to reduce witness intimidation if, as on several occasion during these observations, Witness Service volunteers lead those

witnesses into the court past where the defendant and his witnesses are sitting. Similarly, if defence advocates bring their clients into court whilst the victim is having a pre-trial familiarisation visit, this again frustrates the goal of reducing victim intimidation. These provide examples of practices and cultures that seem to develop at the level of individual courts. Hence, providing the practical facilities and processes is one thing, but practitioners and others must understand their purpose and operation (and accept them as legitimate) in order for these to be beneficial.[12]

In this category of centrality I also include the need to allow victims some degree of participation in any 'victim-centred' system. The justifications for this position were given in Chapter 3, where it was also suggested that participation in the form of consultation may be achievable without resorting to fundamental reform. This was based on the (existing) principle that judges and magistrates must make decisions based on all available information. As such, the main obstacle to such participation again seems to be the resistant culture of practitioners in general (the wider 'legal' culture) especially the presumption of a zero sum relationship between victim and defendant rights.

The review of relevant literature uncovered many hints that cultural and occupational practices may be more vital to the victim-centred system than practicalities. Erez (1991, 1999, 2004) criticised the widely held view that only 'normal' levels of impact should affect sentences and blamed this for the initial low take-up of victim personal statements. Temkin (1987) and Cretney and Davis (1997) also emphasised the role of occupational cultures as a key prerequisite to victims' discomfort in giving evidence. We also saw Shapland et al.'s (1985) overarching conclusion that the changes required to achieve victim-centeredness were more attitudinal than structural. Such attitudes need to be addressed at the levels of individual courts and practitioners/professions, but also with regard to the legal culture instilled in advocates and other lawyers as they are trained and as they begin to practice.

Cultural centrality will underlie practical centrality at all stages of the trial process. For example, we have noted that, in the weeks leading up to a trial, practical centrality requires a committed and proactive case progression officer (occupational culture). In

[12] Witness waiting rooms are, in any event, also a cultural development in that they suggest an acceptance that victims and witnesses, like lawyers, merit their own 'behind the scenes' area of the court.

addition, however, this must be backed with enthusiasm amongst all relevant criminal justice agencies (legal culture) and the courts (court culture) to work together towards effective case management. Case management must not be treated dismissively as pointless bureaucracy to be engaged with only two weeks prior to the trial.[13] This also means an end to the 'blame culture' that permeated through the observation sessions and interviews; whereby one part of the criminal justice system blames another for delays or cracked and ineffective trials.

Of course, here practical centrality and cultural centrality overlap; for in order to instil this kind of culture into defence solicitors in particular – where occupational culture dictates emphasises distrust and unpredictability of clients – the system needs to operate in practice in a way that demonstrates the usefulness and relevance of the pre-trial review system. In the same way, convincing benches of magistrates, district judges or circuit judges to be proactive in enforcing the Effective Trial Management process is as much a cultural change as it is a practical issue of training, and probably more so.

In recent years, cultural moves towards reducing delay in criminal proceedings have been spurred on by developments in case law. As discussed by Jackson et al. (2003), the case of *Porter* v. *Magill*[14] seems to confirm that, under Article 6(1) of the European Convention on Human Rights, defendants have a right to be tried within a reasonable time. As Jackson et al. note, this itself is not an especially significant development, as such principles date back to the Magna Carta. Importantly, however, in *Porter* v. *Magill* Lord Hope confirmed that this was a guarantee independent of a defendant's right to a fair trial. In other words, the remedy available for a breach of this right went beyond abuse of process arguments. This meant it was not necessary to demonstrate that 'unreasonable' delay in getting a case to court had prejudiced the chance of a fair hearing *per se*, the relevant test was simply whether or not the delay is 'unreasonable' given all the circumstances and features of the case. Interpretations by the European Court confirm that Article 6 is intended to protect *all* parties from excessive procedural delays, especially in criminal cases, so as to reduce the period of uncertainty for the accused.[15]

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[13] See page 237.

[14] [2002] 2 A.C. 357 (HL).

[15] *Stogmuller* v. *Austria* (1979-80) 1 E.H.R.R. 155, para.5.

As such, case law may require court staff, practitioners, and judges to take proactive steps towards reducing trial delays, certainly pursuant to defendants' rights. For Jackson et al. this is an expectation that applies to parties other than the defendant:

> "By its nature, delay chiefly impacts on the defendant, but we suggest it can also be seen to impinge on witnesses and victims. The mental burdens of uncertainty and lack of 'closure' affect both witnesses and victims, whilst witnesses, once notified of their status, are also bound to the court" (p.514).

Under this construction, judges would be obliged to take account not only of the defendant's position when deciding on the 'unreasonableness' of delay, but also that of the victim, which again means consulting victims on the impact of such delay.

In *Attorney-General's Reference (No 2 of 2001)*[16] it was confirmed that in most cases the remedy for a breach of a defendant's right to be tried in a reasonable time would take the form of a reduced sentence rather than a stay of trial. Nevertheless, in cases of young defendants – owing to the increased pressures unreasonably long delays may bring – *Dyer* v. *Watson*[17] is authority for the proposition that indictments against these defendants in cases subject to unreasonably delay should be dropped. In any event, Jackson et al. make the point that managerial reforms and targets are not enough to tackle unreasonable delays, arguing in favour of statutory time limits from the period of arrest to court appearance, and from the first court appearance to trial.

Of course, a stay of trial may be the exact opposite of what some victims require from the system. This will be especially true when victims are seeking 'closure', not just through an end to those proceedings, but through an (accounts-based) 'official' process that vindicates their victim status (Miers, 1980). For such victims, courts in a victim-centred system would be under an obligation to ensure delays did not reach the stage where a stay of trial was likely. Hence, the 'remedy' for such victims could rest in the court moving a case 'up the list', or at least holding a pre-trial review hearing to see if progress can be expedited. Such processes could be initiated at the behest of the victims themselves through their legal representation (if they are to be granted party status[18]). This would also mean an end to any 'tactical' delays by defendants (or defence advocates) (Elias, 1986; McConville et al., 1994). These include any attempt to 'wait

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[16] [2001] 1 W.L.R. 1869 (CA (Crim Div)).

[17] [2004] 1 A.C. 379 (PC (Sc)).

[18] See below.

out' the witnesses in the hope that they will change their mind about giving evidence (as in domestic violence cases especially) or their memory becomes clouded. Again, an end to such delays is therefore a matter of culture and training as well as practicality.

Cultural centrality also means addressing the widespread view that, in reality, little can often be done before a trial to avoid delays and problems on the morning. For whilst defendants can be criticised for not applying their minds to cases beforehand – and the observation can be made that 'the court door' focuses their minds – the same appears to be the case for some (prosecution and defence) lawyers. This is especially true when delays and problems on the morning of the trial are accepted as an 'inevitability', such as in cases of domestic violence.[19] This leads to the wider point that in a choice between inconvenience to the system/court/lawyers and inconvenience to the victim, practitioners in a victim-centred system would accept the former. The victim-centred model therefore implies a change of views as to who it is permissible to inconvenience.

Indeed, the morning of a trial brings many underlying cultural precepts into play for advocates, especially prosecution advocates. In a victim-centred system it is clear that prosecutors would see it as part of their job to meet victims and keep them informed as to the progress of the case. Culturally, something as simple as not returning to the 'safety' of the barrister's robbing room at every opportunity may be enough to ensure the flow of information to the victim is kept up to date.[20] As we have seen, many advocates interviewed for this study already believed that greeting witnesses and giving them some explanation was part of their role, but some were still uncomfortable about the issue and, for example, asked the defence for permission at the first sign of going 'beyond' the very prescribed cultural boundaries with victims.

In addition, we know that several agent prosecutors believed they were used as scapegoats by the CPS, which gave them all the trials involving 'difficult' witness contact work. This of course represents more 'bickering' between different parts of the criminal justice system as opposed to the efficient sharing information required by practical centrality. In addition, culturally, such lawyers would not view these cases as

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[19] Even though the present results indicate little difference overall between the late running or failure to run of domestic violence trials compared with other trials. See Chapter 6.

[20] Although this may be a wider issue than victim avoidance if the nature of the barrister's profession is such that the robbing room becomes a key setting for information distribution and career development.

'difficult' in a victim-centred system, but rather as a normal application of their victim-care role.

In a system where victims have become culturally central, such advocates would also accept the assistance of Witness Service volunteers, without dismissing them as 'busybodies'. Again, the suggestion by one barrister that the Crown cannot proceed without the Witness Service suggests such a change in attitudes is possible, although here we must be wary of the possibility that prosecutors will abandon victims in the hands of the Service without coming to speak to them directly. Practitioners would also be less concerned when such volunteers strayed from the black letter of the law in their explanations to victims, having taken a truly 'victim's eye view' of the situation. In other words, the legal culture of practitioners must be reconciled with the very different culture of volunteers, who clearly emphasises helping the victim and making them feel secure. This would involve less by lawyers emphasis on consistency and 'proper procedure' (very much reflecting the wider 'legal' culture) and more emphasis on ensuring the victim is comfortable and prepared to give evidence. This might again involve more use of staggered witness calling; for whilst the respondents in Chapter 6 made a number of fair points regarding the practical limits of such a system, there was a definite sense that *culturally* most are also nervous about losing the professional security of having all witnesses present before the trial begins.

Culturally-centred victims would also be *genuinely* consulted on issues like plea bargaining and bind overs, and would not simply be expected to agree to a decision to avoid the trial made in their absence.[21] Following our critique of Ashworth in Chapter 3, this of course represents a right to consultative participation, such that the views of victims are taken into account by decision-makers. As argued in Chapter 3, the key goal here will be instilling within the minds of practitioners the view that victims' opinions matter, are not necessarily grounded in bias or vengefulness, and will not unduly impact upon the rights of defendants if they are considered along with other factors (which in any event are probably less than 'objective' themselves). Again, such ingrained are arguably more a reflection of the wider legal culture instilled in lawyers across the legal professions by their common training and then (thus far) reinforced by their practical experience.

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[21] The tendency to do so revealed by this study reflects the earlier findings of McConville et al. (2004).

In the courtroom, we have already noted that practical-centrality requires proactive clerks, legal advises and benches who are willing to enquire about victims who are waiting. Benches must also ensure information is passed on to the Witness Service and/or CPS caseworkers, as well as offering explanations directly to victims if necessary. As with the pre-trial review hearings, this will require training to ensure judicial, legal, or administrative actors understand such roles and carry them out. More specifically, however, it must become part and parcel to the operational (cultural) practices of judges and magistrates to take such actions and be proactive.

Cultural centrality also means that all the actors in the process share these common values, this will avoid a situation where prosecutors 'deflect' magistrates from their intention to bring witnesses into court to provide explanations or thanks.[22] In the Crown Court in particular, this would also involve instilling a sense of urgency about the proceedings on the morning of the trial, which is already present to some degree at the magistrates' court.

During the trial, inviting victims to sit, giving them water and offering them breaks are again culturally based practices. So too is the welcoming of supporters into court – or into the video-link room – if it will assist the victim to give evidence. The reliance in all courts – but especially in the magistrates' court – on handwritten notes may also be more cultural than practical, which we have already said causes witnesses to be interrupted. In a victim-centred system, the emphasis would be on facilitating the victim's smooth explanation of the evidence (and the building of accounts, on which see below) rather than the notes made by lawyers. Hence, a cultural shift away from this reliance on paper might be necessary. In addition, court staff and lawyers need to be aware of issues like the victim giving evidence near or in the eye line of defendants. It also seems unlikely that a victim-centred system would continue to insist that witnesses face benches of magistrates for the purely cultural reason that it represents "a courtesy".[23]

We have argued in Chapter 3 that advocates rely on many cultural precepts during evidence, many of which may not actually be vital to the basic adversarial process itself. Hence, improving the experience for victims means altering these occupational practices rather than the procedure *per se*. As such, in a victim-centred system there

[22] See Chapter 6, page 224.

[23] See page 252.

would be a broad consensus – expressed by some respondents in this study (especially younger advocates) – that excessive hostility is not required in order to adduce evidence. Even before evidence begins, there would be fewer cultural reservations about 'letting the victim in' on issues like hearsay and cross-examination, so that the victim would be prepared for these. Generally speaking, lawyers would not be inclined to interrupt victims during the evidence and would avoid labelling them as deceptive or casting aspersions on their character. In short, the overriding legal culture would be one of ensuring evidence is still an adversarial process, but also a *civilised* process; the opinions of lawyers interviewed for this study confirm that this is not a contradiction in terms.

In relation to special measures, we have already noted that practical centrality requires high quality audio and video reproduction. Culturally though it seems that lawyers in a victim-centred system would accept what is still widely viewed as the 'problem' of not being able to appreciate victims' demeanour though the video-link system. Again, this seems very much a product of entrenched cultural practices, by which the 'toolkit' of advocates has previously been based around reading the body language of victims standing before them. My own argument is that this could also be achieved through video-link, especially with high-quality equipment. The issue is therefore that advocates need to be trained (practical centrality) and become more comfortable with reading characteristics in this way (cultural centrality). Clearly of course, such a system initially needs lawyers who are prepared to make special measures applications, and are willing to accept evidence adduced in this matter (perhaps in the *majority* of cases if victims so wish[24]) without concern that it will affect the outcome of the case. Victim-centeredness also implies lawyers will not use special measures 'against' victims by subsequently barring them from entering the court to observe the remainder of the trial.

We saw in Chapter 6 that there is generally mixed opinion as to whether special measures – especially video-links – always help witnesses give evidence. Certainly, these observation sessions seemed to confirm this. As such, how a victim reacts to giving evidence in this way is probably less about the equipment itself and more about the *attitude* of the lawyers asking questions, and whether their individual style is adapted to suit the vulnerability of the victim.

[24] Meaning perhaps these would no longer be considered *special* measures.

Perhaps most controversially, it was argued in Chapter 3 that a victim-centred system might afford victims some degree of consultative participation in the sentencing process. Again, the same basic argument applies that, culturally, lawyers and the judiciary must become used to the notion of taking account of victims' stated views and accepting that this does not detract from due process. More specifically, the inclusion of victim impact information as part of a victim's wider account would also represent a cultural change for many lawyers and benches; regarding how this information should be used and how it should be presented to the court. Perhaps more importantly, however, benches in particular will need to adapt their practices so that it is made clear to victims that such information has been taken into account (if not necessarily followed) during the decision-making process. We have seen from the literature that victims do not wish to run the system (JUSTICE, 1988) – hence the general lack of decision-making participation in the present model[25] – but it does seem vital that they are able to appreciate that the information they give on the impact of crime, and even their opinions on sentencing, have been considered. The alternative is to raise victims' hopes only to later dash them, leaving them more disappointed with the system.

Of course, adducing such information at trial would also require a change of cultural priorities for police officers, if they continued to take the victim personal statements. Again, the distinction here is between the *practical* facilitation of such changes through distributing information (and offering training and education to lawyers, police and other practitioners), and the *cultural* change required to accept these reforms into real-life working practice. In so doing, lawyers in victim-centred trials would consider it an important aspect of the process to involve victim impact information, and to adduce and consider the victims' opinions. As such, advocates would be less nervous about 'emotional outpourings' in court and also professionally more willing to take on the role of a victims' advocate.

Generally speaking, a very important cultural change within a victim-centred system would involve the expansion of practitioners' notions of 'victimhood' beyond the stereotypically vulnerable and 'blameless' victim. After all, 'victim-centred' implies that the real victims are brought to the heart of the system, not the victims we might hope them to be. As noted above, this also means developing lawyers' ideas about the impact of crime on victims. Hence, expanding notions of victimhood and vulnerability

[25] Although see the section on accounts centrality below for some exceptions.

means, for example, affording special measures to non-ideal victims and to adults. This also means trusting *all* victims to leave the court before giving evidence, rather than assuming 'professional' victims (and other witnesses) will come when called whilst non-ideal (but more regular) victims will disappear, taking the court's pager with them.

Essentially, cultural centrality means instilling within lawyers and staff at all stages of the criminal justice process – and the trial process especially – genuine concern for the victim[26] and the ability to see things from the victim's perspective, such that the facilities and mechanisms discussed under practical centrality will function and the views of the victims are not excluded from the process. Ultimately, this also means establishing such considerations as a key aspect of court culture, and legal culture in general. We have seen in Chapter 6 that many lawyers are becoming comfortable with *expressing* concern for such victims, but in a truly victim-centred system their occupational practices would allow them to demonstrate such concern 'in action', and without fear of being ostracised by colleagues in the wider court or legal community.

7.1.3 – Accounts centrality

Finally, as argued in Chapter 5, to achieve truly 'victim-centred' trials it is necessary to find some way of bringing victims' *accounts* to the centre of that process. Again, this is largely based on the notion of the trial as a collection of competing stories. This would mean allowing victims to make their account during the trial procedure in a much freer manner than is currently permitted, even (in most cases) through special measures. As this is clearly the most controversial aspect of the model given in Figure 2, some time will be spent here elaborating on its proposed practical operation and, initially, impressions derived from the observation regarding the pivotal role played by the *audience* to victims' accounts.

7.1.3.1 – The role of the audience: the lawyers and the state

It became increasingly clear through the observation sessions conducted for this project that the limitations placed on victims' accounts during criminal trials can be understood as a consequence of the roles played by the audience to these stories. Indeed, to understand criminal trials as a collection of stories and interpretations of stories (Van Duyne, 1981) necessarily raises the question of to whom such stories are aimed, and to

[26] As opposed to 'tactical' concern designed to prevent the victim giving evidence.

what end. In other words, we must ask who are the consumers of these stories? When a victim makes his or her account in a courtroom setting there are many possible consumers: the judge or magistrate who presides over the case; the lawyers that present it; the state in whose name the charges are brought; other magistrates or jurors; the victims' friends and family sitting in the public gallery; the defendant[27]; the defendant's friends and family in the public gallery and the wider community (usually through the media[28]). As suggested by Van Duyne's (1981) analysis, these different audiences will form (or create) different interpretations of a victim's story because, from their varying perspectives, different features of the story will have greater or lesser significance. To put it another way, different audiences will have different views on what constitutes a 'good story'.

From the victim's perspective as account-maker, such differences might prove highly significant. This is because, just as a story can impact upon its audience, the audience exerts a definite influence on the story. In other words, audiences are not merely passive consumers, but actively contribute to and shape the story (account) being presented. Ken Plummer puts this in the following terms:

> "But telling [of stories] cannot be in isolation from hearings, readings, consumings...Further, producing and reading should not be seen as separate events. There is a flow of action and producers become consumers, whilst consumers become producers" (1995: p.25).

Thus, an account-maker will adapt his or her story to suit the current audience. In the context of criminal trials the capacity of the audience (at least, the legally qualified component of it) to exert a literal influence on the story being told is particularly apparent from Chapter 6. That is to say, the capacity of the lawyers to influence the presentation of a victim's account in order to produce what they view as a 'good story' is clear. In this case, a 'good story' is apparently one which sticks to the strict rules of evidence and which – from the prosecuting and defence advocates' respective positions

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[27] In relation to victim personal statements, Graham et al.'s (2004) report suggest that victims sometime make VPS statements without realising that defendants themselves might see them. In such cases, the defendant may be viewed as an 'unintended' audience from the victim's perspective.

[28] In this study, one of the Crown Court trials – a case of multiple rapes and sexual assaults – did prompt some fairly widespread media attention within the local area.

– assists their respective arguments.[29] Indeed, the court's formal surroundings – and the oath or affirmation to 'tell the truth, the whole truth and nothing but the truth' – leads one to suspect that victims will adapt their accounts to suit the needs of such an audience (as far as they are able to determine them) with little explicit prompting. So, to give one example, whilst victims may be willing to provide very emotional accounts of victimisation to family members in the privacy and comfort of their own homes, or to the Witness Service volunteer right before the trial, a greater degree of control (or attempted control) was clearly displayed in the formal court environment. This may partly explain the general lack of *overt* negative reactions to the process in the present dataset. Thus, the story is changed to suit its audience.

This is essentially restating the argument from Chapter 5 – confirmed in Chapter 6 – that victims in criminal trials are not able to tell their 'full' stories, in their way and based on their own criteria, because the most apparent (certainly the most influential) audience has different priorities than the victim. Indeed, this 'legal' audience will be very different from the audience a crime victim can be expected to grow accustomed to between the initial victimisation and the trial. Sympathetic friends, family members and Victim Support volunteers may be willing to accept (perhaps demand) a much wider range of information than that allowed under the court's evidential rules, including the emotional outpourings; albeit some will be unable to handle them. Significantly, however, whilst most victims will have some idea as to the needs of a family audience (tailoring the story appropriately) the lack of information held by most victims on the working of the criminal justice system means they may be largely unaware of the requirements of this audience, which demonstrated itself in this study through the inclusion of hearsay and other legally contentious material in victims' evidence. Victims will therefore have difficulty telling their stories in court because they don't know their audience. For the same reason, it will also be more difficult for them to prepare their stories in advance.

The above notwithstanding, to view the question of audience exclusively in terms of individual lawyers in individual courtrooms is to take a rather limited view of an issue which has far wider implications, especially given our discussions in Chapter 4. Specifically, one can view an audience of legally qualified persons as representatives of the state. Of course, in the literal sense only the prosecutor is working as an agent of the

[29] We know from McConville et al. (1991) that such versions of the story may have been manipulated and finalised well in advance of the trial.

state during a criminal trial. Nevertheless, all lawyers are bound up in a criminal justice system which derives from the state and, therefore, they all seek to ensure that the procedural rules handed down by the state are complied with. Furthermore, at the societal level, victims become involved in the criminal trial procedure as a result of the state's intervention in citizens' actions.[30] Hence, it is the state that brings prosecutions against defendants through a trial process set up by that state and with the fundamental goal – according to one branch of legal philosophy (De Smith and Brazier, 1998) – of ensuring that state's continued existence. The implication of this is that whilst lawyers in the courtroom are the immediate audience, the state stands behind them as the ultimate consumer of victims' stories. This means it is not so much the views of individual lawyers as to what makes a good story that is crucial here, but rather the state's view.

Of course, this raises a question too extensive for the present thesis to answer, namely what we mean by 'the state' and whether it is the government, the people, the local community[31], or some combination of the three (see Crawford, 1997; Harris, 2004). Identifying what the state actually wants from victims in criminal trials is also far from straightforward. The most obvious method is probably to examine the stated goals of the criminal justice system as set out by the organs of the state. In this way, we might infer what the victim's involvement in the trial procedure is intended to achieve. Unfortunately, in recent years the purpose of the criminal justice system has been put very broadly, which we saw reflected in Chapter 4. Hence, the government-run 'cjsonline' website suggests a multitude of goals for the CJS including: delivering justice; punishing the guilty; rehabilitating the convicted; protecting the public; preventing crime; promoting public confidence; increasing the satisfaction of victims and witnesses and meeting the 'wider needs' of victims (cjsonline, 2005a). This multitude of possible outcomes makes it difficult to derive the state's priorities. That said (and at the risk of prompting a circular argument) the inherent limitations we have seen placed on victims' accounts during the criminal trial process might suggest that the state does not consider their wider accounts a 'good story'.

The lack of more specific indications as to the purpose of criminal justice means we must resort to more theoretical discussions. As such, another way of shedding light on

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[30] Having assumed responsibility for their conflicts (Christie, 1977).

[31] On which see Crawford (1997).

this issue is to consider it in relation to macro-level trends which have been identified in the field of law and order. Recently, such debates have been dominated by reference to punitive rhetoric, the 'politicisation' of crime and the 'punitive populism' (Bottoms, 1995) engendered by Garland's (2001) 'culture of control' (see also Downes and Morgan, 2002; Young and Matthews, 2003). Whilst, in more recent years, the political parties have established a form of middle ground 'second order consensus' on law and order issues (Downes and Morgan, 2002) it seems that the punitive impetus remains (Young, 2003). Arguably, this is exemplified by the recent implementation of s.101 of the Criminal Justice Act 2003, which allows for the inclusion of defendants' bad character as evidence at trials.

Such theorising is relevant to victims as account-makers in criminal trials because if the system is actually (if not explicitly) premised on punitive or retributive strategies – as we have seen argued in Chapter 4 – then, from the state's perspective, the victim's account is called for in order to achieve these ends.[32] In essence, the purpose of asking (or compelling) victims to come to court is to sustain a prosecution and, perhaps, to serve as the 'wronged' party; thus providing the justification for punitiveness. This limits the scope of the story a victim is permitted to tell, because all that is required to make it a 'good story' from the state's perspective is that it contains the evidential elements necessary to achieve a conviction. It also means victims must hide or restrain any 'non-ideal' tendencies, which we see reflected by the imbalance of the Criminal Justice Act 2003 which makes it easier to adduce a defendant's bad character compared with the victim's.[33] It would also mean that any 'restorative' (non-punitive) intentions on the part of the victim would be curtailed. This is in line with Garland's view that victims become the reference point for success and punitive measures when faith in the ability of the criminal justice system, or the government, to control or reduce crime is lost.

Fundamentally, bringing victims' accounts to the centre of the criminal justice system has two main aspects; allowing the victim to communicate accounts in an open, unstructured manner, and giving the victim the *choice* over whether or not to do so (and how to do it). This clearly means that victims in such a system would not be forced to give evidence against their will, because the system would be victim-centred, and so the

[32] To equate notions of 'the state' with the political will of its government is simplistic, but necessary for the sake of brevity.

[33] See Chapter 4.

needs of the victim to tell or not to tell their stories would trump any public interest criteria or even – as in the case of domestic violence – public protection requirements. Hence, in this instance victims would be afforded decision-making power because to compel victims to give evidence would be to take over their stories, in the same way the system now takes over their conflicts (Christie, 1977). For the same reason, the views of victims would again be carefully and *genuinely* considered when deciding over issues like plea bargaining or bind overs, because in such instances practitioners are effectively negotiating what version of the victim's story to present to the court.

Of course, this all concerns the significant tensions between the view of the victims in regards to prosecution decisions and that of the state (see Cretney and Davis, 1997). It was argued in Chapter 3 that to give victims decision-making power on this issue would be a fundamental reform; placing them under undue pressure and signifying a denial of the state's responsibility to police and prosecute breaches of the law. This takes choice away from victims, but is perhaps not overly problematic to a victim-centred system so long as the victim has a choice over whether or not to give evidence. Following Chapter 4, however, the bigger issue seems to be that it remains the exclusive preserve of the state to define 'criminality', and therefore 'victims of crime'[34]. We have seen how, in recent years, official notions of victimhood have expanded; perhaps – in line with Garland (2001) – because the system needs more victims in order to legitimise itself. Nevertheless, we have also seen how 'victims' of domestic violence may still be tarred with that label against their will. In the operation of the system we have also noted how practitioners' appreciation for the problems faced by vulnerable and intimidated victims may well be limited to 'ideal' and blameless victims.

It is therefore submitted that in a victim-centred system victims would be self-defined.[35] Self-defined not in the sense that – by choosing to be or not to be victims – these people thereby make prosecution decisions, but rather in the sense that they are free to choose whether or not to tell a story to the court, and to decide for themselves what that story should be. Conceivably, this might include 'victims' who wish to speak to the court in order to deny their victimisation, that is to present the lack of impact to the court.

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[34] The relationship between the state and the law is highlighted by Walklate (2007).

[35] Just as, under National Crime Recording Standards, police discretion over whether or not to record a crime is reduced and more emphasis is placed on the victim's own perspective (Maguire, 2002).

In practice, Chapter 6 indicates this is not really such a big step. For in cases of domestic violence we have seen that, while 'officially' prosecutors must follow a very prescriptive policy handed down by the CPS, even the Chief Crown Prosecutor admitted how, ultimately, proceeding with these cases is down to the individual victim's choice as to whether or not they will give evidence, because a prosecutor or a court would rarely take the step of forcing them. An accounts-centred system would simply accept from the outset the reality of the victim's choice, and hence not subject them to vigorous or upsetting persuasion.

Aside from punitiveness, another broad development from the sphere of criminal justice (again discussed in Chapter 4) is the recent move to promote efficiency in the operation of the system in accordance with a new 'public service' ethos (Rock, 2004). As has been noted previously, what is of interest here is that the targets compel courts to reduce ineffective trial rates, not cracked trial rates. To the courts, this effectively means that cracked trials are preferable to effective (full) trials, because they take up less time and resources; we have seen in these results that most take less than an hour. More tellingly, cracked trials do not require witnesses to give evidence, but instead rely on written witness statements to adduce all necessary information. As such, if the primary goal of the state is to maximise efficiency in its criminal justice system, this once again restricts victims' accounts to those recorded in their witness statements, with the added stipulation that they will not even be required to present this information themselves. Under this interpretation, a 'good story' from the state's perspective might be one that is ultimately never told.

To summarise, the audience to a victim's story is likely to influence and restrict the scope of the account he or she is allowed to make. Whilst practically we might view this in terms of individual lawyers and their own interpretations of what makes a 'good' victim's story, at the macro level we can see this as a reflection of the state's intentions for the criminal justice system. Whilst it is difficult to determine precisely what these intentions might be at any given time, the suggestion is that – notwithstanding the promise to put victims 'at the heart' of criminal justice – the state as ultimate consumer of these stories is likely to restrict a victim's account to that of the evidential witness statement.

7.1.3.2 – Incorporating victims' accounts and voluntary account-making

It is submitted that the use of pre-recorded examination in chief for vulnerable and intimidated witnesses illustrates that, practically, the existing trial procedure is indeed capable of incorporating victims' accounts and account-making (or, at least, a wider class of voluntary evidence than is traditionally permitted) and with it a victim's 'fuller' story. The remarkable aspect of this procedure is that it does not follow traditional questioning practices. Official guidelines (Home Office, 2001a) maintain that such interviews should include an introductory section where the interviewing officer asks the child about his or her interests, schoolwork and hobbies. More significantly, the officers are required to afford the young witness a 'free narrative' phase in which the child is allowed to talk about an incident without being interrupted or asked any fresh questions. Descriptions of these processes in action were given in the last chapter.

Evidence from the observation sessions confirms that pre-recorded examination in chief is far more akin to genuine account-making than anything afforded to adult witnesses, including those giving evidence via other special measures. Hence, we know that the advent of pre-recorded examination in chief does increase the percentage of time a witness speaks during evidence, and to a more statistically significant degree than special measures in general.[36] What this example demonstrates is that the system *can* incorporate a process whereby victims are given a freer rein to speak about their victimisation prior to the sentencing stage (but including information to be considered by sentencers); including emotional outpourings, information about the impact of crime, and hearsay. Indeed, this does rather beg the question of why adult witnesses (and victims specifically) could not give their evidence (and make their accounts) in this manner. Expanding the use of such procedures to adults can be viewed as the next logical step in a process which began with the expansion of special measures to adult witnesses in the Youth Justice and Criminal Evidence Act 1999.

Of course, during an accounts-based (victim-centred) trial, victims would be permitted to give evidence in whatever way they found it easiest to communicate their accounts to the fullest. This might mean affording them special measures (including pre-recorded examination in chief) but it could equally mean *not* compelling them to give evidence in this way if they find it confusing or, for example, they need to have a more direct

[36] Some of which may actually *reduce* the percentage of victim input, see Chapter 6, Tables 33 and 34.

relationship with the 'audience' of their story. Again, the key point is that victims are given the choice (decision-making power) in an effort to improve their account-making potential.

An accounts-centred system would also focus less on the written witness statement and more on the full account presented by the victim. This would begin right at the start of the process, with less emphasis on getting the statement signed as soon as possible and more on allowing the victim to come to terms with the experience. It might also mean giving them the option to make subsequent witness statements, just as they are permitted to give stage two victim personal statements. At the trial itself, victims would not be so restricted to their written statement, but permitted to give an 'up-to-date' version of the story. As discussed in Chapter 5, this would mean ensuring prosecutors (and judges) have access to the full range of victims' accounts as they develop from the point of taking the original witness statement right up until the day of the trial. This of course means addressing the cultural presumption inherent in most legal practitioners[37] that the 'best' evidence is gathered as soon as possible after an event.

At the trial itself, it is argued that the best way to achieve this may be through a 'free narrative phase' of evidence, even when not giving evidence through pre-recorded examination in chief. Indeed, we have already said that victims would be interrupted very rarely at all in such a system, and certainly would not be troubled whilst giving their accounts by issues like note taking, keeping their voice up, or facing the jury or bench. Of course, such 'full accounts' from victims would inevitably include details on the impact of crime and, quite probably, emotional outbursts. Again, a genuinely accounts-centred system would not seek to restrict victims on these issues – even prior to the sentencing stage – and would be organised from the outset to collect such information. This means efficient use of victim personal statements, and indeed perhaps combining such statements into one with traditional witness statements to produce 'victim account statements' (VAS). Once again, the practical systems would also be in place to offer victims the opportunity to update these accounts whenever they wish. In addition, however, the taking of these statements would be conducted in far less 'evidential' terms than is presently the case. Indeed, as argued in Chapter 5, ideally

[37] But not all, see page 310.

victims would be given the opportunity to physically write a VAS themselves, deriving therapeutic benefits from doing so.[38]

The acceptance of this wider class of information before a finding of guilt or innocence would no doubt prove controversial, and once again require cultural change and training on the part of practitioners and judges.[39] The key aspect of this accounts model is that victims feel they have been able to make a full account and that that account has been presented, accepted as a vindication of their victim status, and considered (certainly at the sentencing stage) by the court. Under such a system, if victims feel the best way to achieve this is through writing a victim personal statement (or 'victim account statement') and having the prosecutor or victims' advocate present it in its entirety, then practitioners must be practically and culturally prepared to do so. Benches, on the other hand, must again be prepared to openly acknowledge the consideration of victims' stories, even if aspects of it are, on balance, rejected during the decision-making process.

7.1.3.3 – Limitations on victims' accounts?

In terms of account-making, it seems that information would be relevant from the victims' perspective if presenting it and having it accepted and considered by the court assists victims in the exercise of reflecting upon and understanding past events whilst preparing them for future life-challenges. In truth, however, given the therapeutic goals of account-making discussed in Chapter 5, the reality is that anything the victim views as relevant would be so relevant to the account-making exercise.

This may seem to afford the victim a very wide discretion to say, present or have presented anything they wish during the trial process. Indeed, it is submitted that a victim-centred system would be geared around filtering in as much of the victims' account as possible through clear and effective procedures, such as the taking of victim personal ('account') statements, or at least multiple witness statements. Nevertheless, this does prompt a debate as to whether any legitimate limitations could be placed on victims' accounts given the theoretically victim-centred nature of the proposed system. In fact, the multitude of stories already being told through the present trial procedure –

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[38] Although, like all other aspects of this account-making model, victims would not be compelled to write if they did not wish to.

[39] It would also no doubt be considered controversial, see below.

whether by witnesses, advocates or other parties – are already subject to a number of explicit and implicit limitations which would carry through even to a reformed, victim-centred system.

Such explicit limitations include the boundaries set by the trial procedure and the rules of court. A prosecutor presenting his or her own interpretation of a victim's story can only do so in accordance with the formal rules governing written and oral submissions, the questioning of witnesses and opening and closing speeches. The point is that whilst much has been said about the limitations placed on victims' accounts, it is important to note that no one involved in a criminal trial has complete discretion over the manner in which these stories are presented. This is important because it suggests that – if everyone's story is to some extent limited by the trial process – then there is no contradiction in enforcing some limitations on victims', accounts even within a victim-centred system

Of particular relevance to civilian witnesses generally are the explicit boundaries imposed on their stories by rules governing contempt of court and witness intimidation. So, for example, if a victim's account includes threats directed at the defendant or defence witnesses this might amount to contempt of court (particularly if it interferes with proceedings) or may in some instances lead to action under s.51 of the Criminal Justice and Public Order Act 1994.[40] Thus, even if such outbursts form a genuine and therapeutic component of a victim's story, a victim-centred system may still be justified in imposing such limitations on the basis that unrestricted contempt of court will lead to reduced confidence in the criminal justice system.

Implicit rules also have an important part to play in limiting the stories told by all parties in a criminal trial, and would continue to do so in a victim-centred system. For example, the trial procedure, and especially the forms of address and language employed by practitioners, are as much the product of convention and a sense of etiquette as they are of written codes of conduct (Carlen, 1976; Rock, 1993). Of course, one of the difficulties faced by victims is the fact that civilians are generally not privy to these unwritten rules. Nevertheless, unspoken conventions will also set boundaries to the stories told by victims.

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[40] Intimidation of witnesses, jurors and others.

For example, it was noted in Chapter 5 that a lawyer's questions set implicit limits on a victim's answers. This would be equally true, however, if victims were simply asked to give (or make) their accounts of the events in question. Even if we stop short of employing some test of the therapeutic value of the information, 'telling a story' implies an identifiable and consistent theme, plot and (possibly) a moral. If the story-teller or account-maker detracts too far from these basic qualities, the account will cease to be identifiable as a story at all and become an unfocused monologue. This is not to say that judges will be rating victims on their style and articulation, but rather on the content of the account; again probably precluding threatening defendants across the courtroom. In a more general sense, society has always imposed implicit boundaries of acceptability on stories. Hence, whilst parents freely tell their children traditional fairytales – many of which contain frightening images as well as scenes of death and violence – there are always limits beyond which the parent is unwilling to go.[41]

Another possible limitation may be to suggest that the proper boundaries of a victim's story, made as an account during a criminal trial, would be to restrict that account to past events. This would explain, for example, why issuing threats in the present indicating future action against defendants and defence witnesses must be excluded.[42] On the other hand, it seems likely that expressions of concern about the future consequences of a crime would be a legitimate and therapeutic aspect of a victim's account. So, for example, if a victim believes he or she will be unable to gain employment as a result of physical disabilities caused by violent crime, this may well be an important part of the story from the victim's perspective. In such cases, the victim would be expressing present anxiety over future events.

7.1.3.4 – Fundamental reform?

Of course, in our last example we are talking about matters related to the sentencing of offenders. The controversial aspect of this accounts-model is that such information may be presented at the trial stage, because – under our broad understanding that inconvenience to victims should be minimised and account-making maximised – it would be objectionable to either force victims to 'pick and choose' information at the

[41] Based on discussions with Joanna Shapland, March 2005. See Propp (1977).

[42] ibid.

evidence stage or to make them effectively give evidence a second time after a finding of guilt.[43]

Initially this may seem like fundamental reform, or certainly prejudicial to defendants. We know from the observation data, however, that benches and juries are already being 'trusted' with a far wide range of information than was traditionally allowed, especially though the free narrative phase in pre-recorded examination in chief. Interestingly, no legal changes were necessary to introduce this effectively new component of evidence for these vulnerable witnesses; but rather the 'rules' are to be found in non-statutory guidelines (Home Office, 2001a). As such, it seems there is nothing legally preventing lawyers from adopting this approach with adults, even during traditional live evidence. When special measures are used, the Youth Justice and Criminal Evidence Act 1999 relates only to the use of the equipment, not the specific manner of the questioning. We have also learnt in Chapter 6 that hearsay as a concept is practically redundant, and with the new bad character and hearsay provisions under the Criminal Justice Act 2003, more of this 'wider' information is coming before benches and juries than ever before.

This of course relates to the finding of guilt or innocence. With regards to the sentencing exercise, the hub of my argument is that so long as decision-making remains with a judiciary trained to weigh up the evidence provided, there is nothing fundamentally objectionable or unfair in allowing victims to present such information (or opinion) as they feel is important to the court, because the notion that a court must take account of all available information when making decisions is already part and parcel to the system. It is simply a matter of making that information available to the existing decision-makers.

As such, allowing benches and juries to hear a few 'emotional outbursts' or pieces of 'irrelevant' or 'impact' information in a victim's full account does not seem such a big step, especially if accompanied by clear explanations from judges (for juries) and legal advisers (for magistrates) as to how this information may be used. In truth the barriers seem once again cultural. Indeed, if this is 'fundamental reform' which changes the basic tenets of the evidence process, then it is a fundamental reform already well underway. Hence, in a victim-centred system, just because an outburst from the victim during evidence is considered 'irrelevant' to the decision-making exercise, this would

[43] The latter solution was demonstrated in Chapter 6, see page 311.

not prevent victims from expressing the information in order to achieve therapeutic outcomes and a recognition of their situation. Such recognition of victims' views must in turn be clearly expressed by the court and – certainly in the case of sentencing – by decision-makers when explaining their decisions, even if they ultimately rejected some of that information during the process, the victim having received clear explanation that this might happen.

Fundamentally, the distinction between victims and lawyers may be that one group are storytellers and the others are evidence takers. If the two sides are to be resolved – with the victim as the new focus – it seems unavoidable that lawyers must learn about stories.

7.1.4 – Achieving centrality through internally enforceable rights

In the above paragraphs I have descried the key characteristics of a victim-centred criminal justice system derived from these research findings. The question now becomes how this could be achieved in practice. The inevitable answer seems to be that victims need rights to ensure they remain practically and culturally central to the process, along with their accounts. As argued previously, rights enforceable only though complaints mechanisms external to the criminal justice process seem unsuited to this task, and I would maintain that these are not so much 'rights' as 'legitimate expectations' like those found under the first Victim's Charter (Fenwick, 1995). Hence, the form of rights I am concerned with here would be enforceable *within* the criminal justice (trial) procedure itself through the proactive intervention of judicial actors.

Three key principles underlie the conception of 'rights' used in this model. The first is simply the practical advantage that (in the majority of cases) victims' grievances could be dealt with then and there during a trial, as opposed to a lengthy complaints procedure initiated after the fact. More fundamentally, however, given the growth in popularity of 'rights discourse'[44] and the long-standing application of the term to defendants in criminal proceedings, it seems inevitable that a victim-centred criminal justice system must now afford victims 'rights', if only for cathartic reasons. Nevertheless, as argued in Chapter 3, if such rights are to go beyond this mere rhetoric, they must be enforceable from within the criminal justice system itself.

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[44] See Chapter 4.

This leads to the final, but crucial, point that court staff – and especially legal practitioners – need to see these rights enforced from within the system in order for them to gain legitimacy and to proliferate good practice. This is because lawyers in their professional capacity are clearly trained and accustomed to following the judgements of the courts. In a more personal capacity, the observations sessions clearly revealed that lawyers working regularly in a specific court are keen to 'keep on the right side' of individual magistrates, and certainly judges. Both these factors should compel lawyers to abide by the new victim-centred ethos to a much greater extent than would be the case with a remote complaints mechanism that is unlikely to affect individual lawyers personally, for to repeat our earlier quotation from Jackson:

> "One of the problems with putting obligations on criminal justice agencies, however, is that they are unlikely to be taken seriously unless consequences attach to non-compliance" (2003: p.319).

In the longer term, through 'leading by example', judicial actors should help achieve the cultural shift in lawyers' occupational practices discussed above. Here we can see a progression of cultures from the judiciary creating an atmosphere of victim assistance and tolerance at individual courts and thus instilling such culture precepts into practitioners.

In this system, then, judges and magistrates become willing to defend the rights of victims in court, during trials and at pre-trial review (case management) hearings. As such, in the majority of cases any derogation from victim rights is picked up by the judge and is swiftly remedied on the instructions of the bench. This would mean adapting the occupational cultures of the judiciary to account for matters such as reducing delay and inconvenience for the victim (which would in turn impact upon the occupational culture of listing staff and administrators) and ensuring account-making principles are upheld during the evidential process. Of course, whilst the argument here is that some benches are carrying out these roles anyway (Plontikoff and Woolfson (2005; Applegate, 2006) such a change will inevitably necessitate practical training.

This is the theory. In practice, however, in-keeping with the contention made in Chapter 3 and above that genuine rights must have consequences attached to their non-compliance, such a system would require mechanisms for remedying cases where victim rights have been breached, or in other words when a trial or an aspect of a trial is conducted in a non victim-centred manner. This presents a problem for victim-

centeredness, because such mechanisms seem likely to exclude victim participation. For example, if such matters become the subject of a large number of 'trials within trials' to argue and resolve the issue (possibly causing significant delay and thus conflict with another principle of victim-centeredness identified above) victims may be excluded, just as they are excluded from legal arguments under the present system. The same would be true if a completely separate system of appeals were introduced to adjudicate on victim-centeredness.

One way to resolve this issue might be to afford (all) victims their own representation, as under the victims' advocates pilots. That is to say, victims might be given party status, which in any case would already constitute an important part of this wider victim-centred system to ensure consultative participation. Of course, the 'appeals' suggested above would not go to the guilt or innocence of defendants, but rather address the question of whether a victim's rights had been breached or (in the case of trials within trials) how to avoid this. Remedies might include compensation paid to victims (as can now be *suggested* by the Victims' and Witnesses' Commissioner when there is a breach of the statutory Code) or perhaps an apology, which may help reaffirm their victim status. The key here will be to consult victims themselves as to the kinds of remedies they would require.

Of course, a fundamental difficulty here is how one might convince judicial actors to take a more proactive view towards the needs of victims in the first place, without infringing upon judicial independence. Indeed, at the outset, let me make it clear that I am not suggesting the extension of statutory documents like the Victim's Code of Practice to cover judges and magistrates. What can be done, however, is to ensure the public is aware that judges and magistrates in this new 'victim-centred' system are expected, as a priority, to safeguard the rights of victims during criminal trials.

My suggestion is that this could be achieved though the publication of a code of judicial ethics, as has previously been suggested in the context of Northern Ireland. In the review of the criminal justice system following the 1998 'Good Friday' agreement, it was suggested that thought be given in the province to the creation of a 'statement of ethics' for the judiciary:

> "[T]here might be an advantage in the public having access to material on the standards required of the judiciary, as a confidence booster...It would also be an

> opportunity to raise awareness about the nature of judicial responsibilities" (Criminal Justice Review Group, 2000: para. 6.138).

Clearly, the proposition is not to intrude upon judicial independence, but to allow the public to know the standards required of holders of judicial offices. Nevertheless, apparently no such statement of ethics has yet been drawn up in Northern Ireland or the rest of the UK. In England and Wales, the Office for Judicial Complaints was set up in April 2006 to investigate complaints of personal misconduct on the part of judicial office holders, but judicial decisions and judicial case management are expressly excluded from its ambit.[45]

The role of such a code in England and Wales would be in allowing the public – and therefore victims – to know what to expect from the judiciary and magistracy regarding victim rights and, as such, effectively compel holders of judicial office to take a proactive approach on such matters (including issues of case management). Hence, the code would make it clear that ensuring the system operates in the 'victim-centred' manner described above is a judicial responsibility. Such codes have been employed elsewhere. For example, in March 2005 the International Criminal Court (ICC) adopted a Code of Judicial Ethics that included the following requirement:

> "Judges shall exercise vigilance in controlling the manner of questioning of witnesses or victims in accordance with the Rules and give special attention to the right of participants to the proceedings to equal protection and benefit of the law" (ICC, 2005: Article 8(2)).

The 'rules' mentioned here are the ICC's *Rules of Procedure and Evidence* (ICC, 2002) which contain many safeguards to what are called the rights of victims, including the right to participate in proceedings as a party with legal representation. For example, under the rules the prosecution and defence can agree on an item of evidence as proven without needing to present it formally in court:

> "unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims" (ICC, 2002: Rule 69).

Indeed, the rules often bring together an 'interests of justice' test with an 'interests of victims' test. This means that victims' views must be canvassed under many of the

[45] The Judicial Discipline Regulations (Prescribed Procedures) 2006 (SI 2006/676), regulation 14(1)(b).

rules, and their privacy protected. Perhaps most significantly, the rules provide the following general principle for the court to work under:

> "A Chamber in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, shall take into account the needs of all victims and witnesses in accordance with Article 68, in particular, children, elderly persons, persons with disabilities and victims of sexual or gender violence" (ICC, 2002: Rule 86).

Whilst there is clearly a special focus here on ideal victims, the general principle applies to all victims, defined in the rules as:

> "[N]atural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court" (ICC, 2002: Rule 85(a)).

Generally speaking it would be hoped that the publication of such a code (coupled with adequate training) would be enough to ensure judges adapt their occupational and cultural practices to take on these kinds of roles. For example, the ICC code is "advisory in nature". More radically, however, it may be that such a code itself would need to be backed by some form of complaints procedure which covered a judge's decisions (to the extent that a victims position was not taken account of) or management of a case (to the extent that victim inconvenience was not minimised).

Although the need to retain within victim-centred justice a system of appeals and trials within trials (preferably involving victim's advocates) is acknowledged, a system of judicial complaints might prove an alternative to the problems of victim exclusion from the former processes; especially if victims initiate such complaints directly, are consulted during the complaints process, and are kept informed. The notion of the public complaining against judges clearly has wide implications; not least that they would become a professional group subject to scrutiny, in the same way that barristers can have complaints made against them to the Bar Council. One way to achieve this may be to have a separate body of judges reserved purely to deal with judicial complaints[46], along the lines of police complaints before the advent of the Independent Police Complaints Authority.

As noted already, whilst the complaint mechanism is controversial, the judicial enforcement of victim rights within the courtroom is itself not so much a fundamental

[46] We saw in Chapter 3 that, presently, complaints can only be made directly to the Lord Chancellor, and that this is a very non-transparent process.

reform as a standardisation of existing practices. Indeed, as the complaints system would be separate from the judicial process, the adversarial model itself still remains untouched. So, when a victim is being questioned in an unreasonably forceful manner, or is interrupted in the witness box (contrary to the principles of cultural and accounts centrality), judicial actors in a victim-centred system would – under the ethical code – be expected to intervene. Similarly, in a situation where a trial cannot proceed and victims or other witnesses have attended, it could become the rule rather than the exception for the bench to bring these people into court and ensure they have been given all the relevant information. Even before this stage was reached, judges could specifically ask advocates whether they have taken time to go and speak to witnesses directly and whether their opinions, availability and so on has been canvassed. The point is that such judicial actions have been witnessed numerous times already during the observation sessions. Placing them in a code of ethics simply ensures such consideration towards victims is extended consistently in all cases, and that victims themselves know in advance that this is what they can expect.

Judges taking responsibility for victim rights would extend to openly acknowledging the consideration of victims' accounts – as noted above – and addressing other cultural barriers, such as those that seem to be limiting the use of compensation orders (Home Office, 2004a). This 'proactive' approach to victims would also extend to benches doing their utmost – in accordance with victims' right not to be inconvenienced by the system – to list cases around victims' and other witnesses' availability, as well as defendants'. On this point, the observation sessions revealed that whilst judges and magistrates are technically in charge of setting dates for court business, in practice the times and dates of hearings are set by administrators (listings officers) and then rubberstamped by the bench. Therefore, if victims are to be put to the heart of the criminal trial on a practical level, it may be necessary for magistrates and judges to become more insistent when it comes to scheduling cases that involve civilian victims and other witnesses, or else for listing officers to contact victims directly, albeit observation suggests this latter suggestion would come as quite a shock to the established occupational cultures of listing staff.

Coming directly from judges and magistrates, such proactive moves to ensure the three forms of centrality are promoted would have a swift effect on the occupational practices of advocates. As noted above, such advocates will be paying far more attention to the judges they appear before than a list of standards backed by a remote complaints

mechanism based in London. In time, such practices will become engrained and form part of local courts cultures – whereby everyone from listings officers to judges share the same victim-assistance values – before moving on to impact upon lawyers' occupational cultures and, ultimately, the wider 'legal' culture passed on to the next generation of lawyers and advocates. What we have seen in the results of this study indicates that such cultures are already changing[47], but presently such changes are largely limited (perhaps by the prevailing *legal* culture) to lawyers expressing concern for victims rather than involving them in any new or significant way in the trial process in practice. If, however, in trials judges are themselves making a point of bringing up such concerns, then the gulf between rhetoric and reality will be forced to close.

Of course, aside from what is perhaps a controversial notion of complaining about judges, a key benefit of this system is that judges *themselves* become the enforcers of victim rights when other actors detract from victim-centred principles. So whilst ultimately the guardian of victim rights may (in the case of judicial complaints as opposed to appeals and trials within trials) lie outside the justice process (externally enforceable), the vast majority of infractions will be dealt with within it. This may be a case of 'trusting the judges', but then the whole notion of judicial independence is based on this. As such, this seems acceptable provided judges are given appropriate training and guidance.[48] Given the indications from Chapter 6 that judges are already generally sympathetic to the notion of supporting victims, it can be confidently predicted that they would operate in accordance with such an ethical code. It should be remembered that defendants were considered to have 'rights' in England and Wales long before the Human Rights Act 1998 made this a statutory fact. As such, it may well be enough that criminal justice and court actors come to *accept* that victims have rights; which is again a cultural issue, reflected across all levels 'occupational', 'court', and 'legal' cultures.

As for the exact content of such rights. We have already noted above that many will be service rights intended to promote practical centrality. These would include the right to respectful treatment, facilities and information but also the right to have effective case management systems, flexible listing strategies and witness calling strategies applied to their cases. Overall, this can be summarised as right not to be inconvenienced by the

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[47] For example, we have seen in Chapter 6 a growing acceptance amongst lawyers of the Witness Service and special measures (at least for ideal victims).

[48] Which we have seen was sorely lacking during the implementation of bad character provisions under the Criminal Justice Act 2003.

system if this can possibly be avoided. Essentially these are still what we would call 'service rights', but service rights enforced through judges.

Rights intended to achieve practical centrality will be mainly positive rights like the examples given above, or the right to meet the prosecutor before the trial. When one considers 'accounts centrality', however, the rights involved might well be negative; for example, the right *not* to be interrupted whilst giving evidence, or not to be asked questions in an unreasonably forceful manner. Phrasing such rights in the negative sense may in fact be useful, as it removes any implication (and associated pressure) that the victims are *expected* to construct a long and intricate account, instead allowing them to say as much or as little as they wish. This would also free judicial actors from the probably impossible task of 'judging victims' accounts' to decide whether they have been restricted or not, leaving them the much simpler task of ensuring against interruptions and so on, which these observation sessions indicate some benches are already doing.

As argued in Chapter 3 and above, such rights would also include the right to participation in the form of consultation on issue like plea bargains, bind overs and – most controversially – sentencing. The argument has been made that these represent non-fundamental reforms and broadly fall under the category of cultural centrality, as they mainly necessitate the acceptance of such procedures by practitioners rather than a change in decision-making processes *per se*. In fact, this is best seen as an extension of the principle that courts (and other actors within the criminal justice process) should base decision on all the available information. Hence, the victim's 'right' to participation takes the form or a right to present such information, to have it considered, and to have the fact of its consideration acknowledged. I have also argued that rights would include the right to decide whether to give evidence and how to do so in the interests of accounts centrality. Here then it would be the role of judges to ensure prosecutors (or other parties) have adequately canvassed the views of victims and taken them into account in their decision-making, as well as taking account of such issues themselves during the sentencing exercise and ensuring victims know such account has been taken.

Of course, once again we are rejecting Andrew Ashworth's (2000) notion that such a system of internally enforceable rights to services *and* participation will interfere with the procedural/human rights of defendants. The view of Erez (2000, 2004) and Sanders

et al. (2001) that there need not be a 'zero sum game' between the rights of victims and defendants was indeed repeated by some court staff and legal practitioners during observations and interviews. The system would of course require judgements to be made – say, as to when questioning becomes 'unreasonable' – but again judges and magistrates appeared to be doing this anyway, albeit in an unstructured and perhaps inconsistent manner; hence my argument that such (non-fundamental) reform requires training and cultural changes in order to formalises an existing judicial function.

It should also be noted that, whilst judges and magistrates would be more willing to consider and articulate upon the problems faced by victims under this model, victims themselves are given little decision-making power. Furthermore, the rationale here is not so much grounded in the 'rights are common sense' approach frowned upon by Ashworth, but rather on the understanding that – as explained above – changing occupational cultures in criminal justice can probably only be achieved from the top down and by benches leading through example. This will make it an occupational norm to account for victims interests, and also a professional necessity if one is to stay 'on the right side' of a judge.

7.1.5 – The triangle of centrality: a fundamental reform?

To reiterate the point raised several times already in this chapter, it is important to stress that the model of victim-centeredness advocated here does not involve especially fundamental reforms to the existing criminal justice system in England and Wales. Ellison (2001) has argued that witness reforms have been characterised thus far by a philosophy of accommodating changes within the existing adversarial framework. This is clearly correct, but my argument is that keeping to the basic tenets of the adversarial model need not preclude putting the victim to the centre of this process.

This is not to say some statutory reform will not be required. For example, the provision of special measures to a wider category of victim – thus permitting them to make fuller accounts – certainly goes beyond the current statutory provisions for 'vulnerable and intimidated' witness. That said, Criminal Justice Act 2003 Act already permits all witnesses (not just those who are vulnerable and intimidated) to give evidence via live video link in circumstances where 'the court is satisfied that it is in the interests of the

efficient or effective administration of justice'[49]. Furthermore, all witnesses in cases of indictable offences or certain prescribed triable either way offences may give evidence through pre-recorded examination in chief in circumstances where the court is satisfied that his/her recollection would have been significantly better at the time of the recording and it is in the interests of justice[50]. Notably, in coming to a decision on the latter point the court is required to have regard to 'any views of the witness as to whether his evidence in chief should be given orally or by means of the recording'[51].

The victim personal ('accounts') statement also indicates that one needs to add to the existing system in order to achieve victim centrality. Nevertheless, the system advocated here becomes victim-centred not because a statute arbitrarily makes it so – or because victims are given decision-making powers which they do not seem to want and which put them under pressure – but because the attitudes of judges, advocates and legal professionals, along with the practical organisation and running of all aspects of the case, become concerned with and incorporate the needs of victims of crime; including their need to construct accounts in an uninhibited way. On this point, we have noted how, in reality, the acceptance of a wider class of information during criminal trials is itself not so fundamental a change, especially since the advent of pre-recorded examination in chief.

Achieving this probably means giving victims 'rights', and giving them rights means enforcing those rights mainly from within the system. This can again be achieved through relatively non-fundamental reform. Under this model, the rights become enforceable largely though appealing to the occupational practices of the judiciary (via a code of ethics) which will move from the top down through the various agents of the criminal justice system. Indeed, referring back to Chapter 4, one might argue that the hard work has already been done, in the sense that the *language* of victim rights is already present in the criminal justice system.

What then of more fundamental reforms, such as a wider scope for victims' decision-making or moves towards inquisitorial or restorative justice? I said at the start of this thesis that I did not intend to criticise the restorative solution (or partial solution) to victims' problems, but rather shed light on an alternative and under researched set of

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[49] s.51(4)(a).

[50] Although, of course, this still represents very much the minority of witnesses.

[51] s.137(4)(d).

options. This remains the case. Indeed, the recent pilots of restorative justice schemes seem to indicate that these processes are capable of seriously engaging with victims (Shapland et al., 2006), and that victims do derive benefits from participation in restorative justice in the form of Youth Offending Panels and referral orders (Newburn et al., 2002; Crawford and Newburn, 2003), albeit here there have been difficulties getting many victims involved. Nevertheless, this thesis has concerned itself with criminal justice because it is felt that we have still not resolved what victim-centred justice in *this* system would look like. In addition, the policy pledge which prompted this thesis is one of putting victim to the heart *of the criminal justice system.* We have also seen the argument in Chapter 4 that the government seems unwilling at present to subscribe to truly fundamental reforms; or at least the policy-making process is such that reforms which at the present are considered too radical time (owing to lack of rhetorical pedigree) must be dismissed. Hence, it is submitted that it is important to examine the place of victims within the existing adversarial system, irrespective of the alternatives. Indeed, on the issue of a more inquisitorial-based system, or systems that accept wider decision-making on the part of the victim, the real problem we have in drawing conclusions is that such reforms simply have not been tried in England and Wales. Perhaps more importantly, however, victims have not been asked whether they need or require truly fundamental reform.

I would like to end this section with a brief word about how this relates to the wider criminal justice system, because arguably the triangle of centrality could be applied to the victim's position in many other criminal justice processes. For example, the work that has been done on policing rape and domestic violence has shown that changing police occupational practises (cultural centrality) and the provision of facilities like specialist domestic violence officers or comfortable units to give statements (practical centrality) should enhance the view such victims take away of the police (Jordan, 2004). In Chapter 5 it has already been argued that police could reflect more of an appreciation for victims' account-making when taking statements, as opposed to sticking purely to traditional evidential criteria. Similarly, Crown prosecutors could become culturally more attuned to victims' wider accounts when reviewing case files. I have already mentioned the issue of practicality in terms of having enough prosecutors to ensure trials involving victims can proceed, and also in terms of ensuring cases are ready to proceed.

Hence, whilst the focus here has been on trials, my argument is that the wider criminal justice system could also be tested for its degree of victim-centeredness by reference to the practical facilities and processes in place to deal with and assist victims, the culture expressed by professionals – and the legal community in general – within that branch of the system, and the appreciation such actors show for the victim's account-making exercise.

7.2 – WHAT IS DRIVING THIS 'POLICY'?

As the conclusions to this research question were the subject of most of Chapter 4, I will not spend a great deal of time reiterating them here. The essential finding was that the 'policy' had been driven by many interrelated factors, some of which had little to do with victims. As such, the impression of a consistent chain of policy, driven over time by compatible goals, is a retrospective construction and a product of the policy-making process itself. In short, this process requires new policies to be presented as the continuation of established work. Hence, this was not so much a 'policy', as a web of 'policies'. These findings are consistent with those of Rock (2005), but emphasise macro forces driving these developments, as well as developments in our understanding of 'victimhood'. The findings also indicate that central government seems to be washing its hands of victims by refusing to take financial responsibility for these measures, and insisting that local agencies find the relevant resources from existing allocations. This has largely been achieved through Local Criminal Justice Boards, although it was argued that these bodies had little fundamental interest in victims' *per se* and would be more concerned about the efficient running of the system. It was concluded that, looking at the features of these policies over time, many have in fact failed to significantly assist victims themselves, which again indicates a reluctance to truly put victims 'at the heart' of the system.

Thus, overall, victims of crime have become prominent in policy-making over recent years because actions that, incidentally, assist victims and witnesses have frequently been grounded in a quite different set of political concerns, and because – now that victims and witnesses have achieved rhetorical acceptance in the political system – new policies are being packaged as the continuation of work *for* these groups which are in fact intended to achieve *other* aims.

That said, I must repeat at this stage the observation that every central policy-maker I spoke to, without exception, seemed genuinely concerned and enthusiastic about victim support and involvement in the criminal justice system. The same is true of local administrators and implementers of such policies.

Now that we have formulated our model of victim-centred criminal justice, it may be useful to return briefly to these issues and ask whether this multitude of driving forces behind victim policies have been conducive to victim-centeredness as we understand it. Such a discussion will also serve to illustrate how the model proposed in Figure 2 can be used as an analytical tool.

So, for example, we have already noted how the general international development in human rights discourse has paved the way for victims being afforded the kinds of internally enforceable rights suggested above. More specifically, we saw in Chapter 4 that this development of 'rights' language was an important driving force behind victim reform; one that again arose in international circles and led to the eventual announcement of the Victim's Code of Practice.

We also saw in Chapter 4 how developments in our understating of 'victimhood' – encompassing the discovery of 'more' victims through macro trends – influenced the policies under review. As such, this is clearly conducive to our conception of 'cultural centrality', which maintains that legal personnel must accept and apply services and facilities to a wider category of 'non ideal' victims and, indeed, to victims outside the criminal justice system. At the same time, we have said that 'accounts centrality' in particular requires that the stories told by *victims* of crime be given some special place in the trial. Hence, the greater distinctions now being drawn in policy-making circles between victims and witnesses are similarly conducive to this model, as is the greater focus on the suffering caused to victims of crime engendered by wider macro influences.

Some aspects of the wider reform agenda have also led to a situation conducive to this model of victim-centeredness. For example, the quest for efficiency in the criminal justice system has the knock-on effect of reducing victims' waiting times and increasing the information afforded to them, which is clearly positive from the view of practical centrality, as is the setting of (efficiency) targets and the development of a joined-up, multi-agency approach to criminal justice.

Hence, despite the fact that many of these reform agendas were not consistently or exclusively focused on victims – and their assistance afforded to victims is often questionable – many of these have actually contributed to a situation where the kind of victim-centred model discussed above could be realised. Of course, this is not true of all the 'other politics' identified in Chapter 4. For example, the apparent influence of populist punitiveness – albeit tied in with wider macro trends – has led to a situation where some lawyers are distrustful of the government's motives in relation to victims, which will set back the cause of cultural centrality.

In addition, aspects of the 'efficiency' goal which lead to a focus on financial savings means local agencies have less money to implement the training, schemes and facilities required by practical centrality. This also reflects the manner in which these national policies have been implemented locally, in the sense that on most occasions local agencies have been given targets to reach but no extra resources from the centre.[52]

Overall, however, I would argue that a look back at the political and social influences driving victim policies over time lends some weight to the model of victim-centred criminal justice described above. For the most part, the two seem compatible. Again, this is only a 'retrospective conclusion', but our findings from Chapter 4 confirm that in policy-making circles this is perhaps the only form of conclusion available. The point is that whilst aspects of the above model may seem controversial, the policy context does not preclude it in principle, if so far it has done so in practice.

7.3 – WHAT HAS PUTTING VICTIMS 'AT THE HEART' OF THE SYSTEM MEANT SO FAR *IN PRACTICE*?

In the description of the victim-centred system given above many criticisms have already been levied at the existing system for not realising this model. Nevertheless, it would be useful here to draw out the main features of the present system that either contribute to or depart from the victim-centred ideal described in this chapter. The simplest way to do this is once again to draw on the three forms of centrality.

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[52] See Chapter 4. When central funding *has* been available, the facilities provided have sometimes been unsuitable. These include the 'cheap option' special measures equipment provided to all three courts through a national contract, see pages 254-255.

7.3.1 – Practical centrality within the present system

Much of the data gathered for this project support the view that the present criminal justice system is indeed becoming practically centred on victims of crime. The provision of facilities at court, for example, was extremely encouraging overall; with all courts boasting reception desks, signposting, cafeterias, seating and a Witness Service with its own waiting rooms. Whilst the waiting rooms themselves were not ideal – either because they were small and cumbersome or simply because victims did not feel comfortable confined to even a well designed room for long periods – it is clear that all three courts had done their best within the limited space and resources. All three courts ensured that the majority of *prosecution* witnesses coming to court to give evidence had some contact with the Witness Service, and facilities were available to have them led to the witness waiting room from the door of the court and to offer court familiarisation visits.[53]

On the morning of the trial, the flow of communication between the courtroom and the victim was fairly good in most cases. In the magistrates' courts, victims would almost always meet the prosecutor firsthand, although in the Crown Court centre it was less common, and the Witness Service and CPS caseworker took on more of this responsibility. Overall, the flow of information was more restricted at the Crown Court, where clerks would often not be kept entirely up to date with proceedings and prosecutors themselves would frequently disappear out of sight to their own areas of the court. Lacking such facilities at the magistrates' courts, lawyers would often remain in the courtroom, where Witness Service volunteers could reach them. The flow of information was particularly efficient at Court B, where the witness waiting rooms were close by.

Under the Effective Trial Management Programme, all three courts had a designated case progression officer and case progression hearings (often still known as pre-trial reviews). These were intended to ensure delays were kept to a minimum on the morning of a trial, and that trials would be vacated from the list in advance if problems occurred. Generally, many lawyers thought this was making a difference, however several noted that the system was not enforced strictly enough and that the information would often

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[53] Based on the responses discussed in Chapter 6, it may reduce the discontent felt by some defence solicitors regarding 'victim reforms' if more of these services were made consistently available to defence witnesses.

not be available at case progression hearings to make much progress. Hence, in practice many cases still arrived in court with problems on the morning. In such cases, victims would have no choice but to wait, as no system of staggered calling was in place at any court (aside from in long cases at the Crown Court) and there were no facilities to call victims in when needed, save in the case of professionals and police officers. Trials were delayed most frequently in the magistrates' court due to listings issues and witness problems, including witnesses not arriving and witness reluctance. In the Crown Court, proceedings were delayed by legal arguments in over half the cases.

On the issue of listing cases, both of the magistrates' courts employed a system of double-listing, which seemed very much against the notion of practical centrality because it kept prosecutors away from victims and often led to victims being delayed in giving evidence whilst 'the other case' was dealt with. In the worst-case scenarios, victims were sent home because of lack of court space to run both double-listed trials. Court A did attempt to abandon the system, but had to re-install it due to lack of facilities. Primarily then, this was a resource issue in that the courts lacked the resources, facilities and personnel to flexibly move cases around the building, and also lacked the prosecutors.

On the issue of reluctance, the case progression system was clearly failing in many cases to flag up problematic or reluctant witnesses, especially at the magistrates' courts. This was particularly the case in domestic violence trials, where it was still very common to resolve problems on the morning of the proceedings. That said, the local witness care unit and the CPS victim information bureau were able to forward such victims to outside voluntary agencies for assistance, which sometimes made them more willing to assist the prosecution. If cases had to be adjourned, or were cracked due to plea bargaining or a bind over, whilst victims did tend to be 'consulted' at all three courts, the reality was often that the decision had already been taken by lawyers in the courtroom. On the other hand, it was now much more common – especially at the Crown Court – for a trial to proceed in the defendant's absence.

When a case did proceed to trial, many practical facilities and procedures were again in place to assist the victim. Hence, victims were usually asked to sit down and were offered breaks. Most had been given a copy of their statement to read over in advance, either by the prosecutors themselves (magistrates' courts) or the Witness Service/CPS caseworkers (Crown Court). Victims were usually referred to by name and thanked after

they had given evidence. Supporters – whether Witness Service volunteers or friends and family – were frequently welcomed into the courtroom.[54]

Nevertheless, several practical difficulties were still apparent during the evidence-giving process itself. One major issue in the magistrates' court was the need to interrupt victims in order for various lawyers to take notes. Another issue, again in the magistrates' courts, was that the courtrooms and witness boxes were not positioned so as to make it easy for the victims to face the bench whilst giving evidence, leading to a great deal of 'head-turning' as lawyers asked questions and victims attempted (on instruction) to respond towards the magistrates. One particular problem at Court A was that some witness boxes were positioned right next to where the defendant was sitting, and the only alternative was often to move the defendant so they were positioned behind the defence advocate and directly in the eye line of the victim giving evidence.

On observing victims and other witnesses give evidence, it became clear that many seemed somewhat unprepared for certain aspects of it, especially the manner in which evidence would be tested during cross-examination. This leads me to believe that information regarding some of the more practical (or realistic) aspects of the trial process is not being afforded to victims beforehand through leaflets and other resources. On this point, it is interesting to recall the view of one district judge that generally witnesses appeared just as prepared (or unprepared) to give evidence in recent years as at any time in the past.[55] Of course, as noted in Chapter 6, this may be due to the fact that *more* vulnerable and intimidated witnesses are now coming forward to give evidence, and a smaller percentage of them are finding the process too daunting.

The other point about evidence is that in all three courts – clearly contrary to the notions of practical, cultural and accounts centrality – victims were frequently interrupted, often for the lawyer to ask another question or (in the magistrates' courts) to give the lawyers time to make notes. That said, the actual tone of most questioning was not as hostile as might have been expected. Most lawyers defaulted to a generally formal, but polite, style even during cross-examination. On the few occasions that questioning did become hostile, it seems benches were increasingly willing to step in. Consequently, many victims did not overtly exhibit particularly strong negative emotions during the process or after it.

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[54] Or at least, no objections were made to their presence.

[55] See page 293.

Special measures for vulnerable and intimidated witnesses generally seemed to operate effectively, although there were issues with setting the equipment up in the morning at the magistrates' courts, and occasionally with feedback on the microphone at all three courts. Special measures applications were frequently granted on the morning of the proceedings, which again indicates that pre-trial review hearings were not always fruitful.[56] In general, the feeling amongst many lawyers was that it was very easy to succeed in a special measures application, although it is notable that such measures were still being used largely for 'ideal victims'. A common criticism with the video-link equipment in particular was that the video-link rooms were often uncomfortable and, on occasion, apparently worse for victims than the courtroom would have been. In the magistrates' court, many administrators – and indeed magistrates – complained about the cumbersome nature of the screens blocking their view of the court. The magistrates' courts also lacked the facilities to edit pre-recorded examination in chief tapes.

On the issue of victim impact information, this was usually not forthcoming during the actual trial proceedings. Nevertheless, information from interview respondents confirms that the victim personal statement scheme was being offered to more victims by the police, who took the statements in the same manner as regular witness statements. There were, however, numerous complaints that such statements – when they appeared – were brief and offered very limited extra information aside from 'the obvious'. Survey respondents in this project seemed confused as to what a victim personal statement was. Nevertheless, advocates were on the whole willing to adduce such evidence at the sentencing stage, and benches were seeking it out, albeit usually only in cases where they believed from the outset that it would be useful.

Following the trial, it was clear that procedures were in place between the witness care unit and the CPS victim information bureau to provide victims (and witnesses) with information and explanations of a case resolution, and to forward them on to other agencies if they needed further help or support.

Overall, the system on display here seems generally very developed in terms of the practical centrality of victims to the process. Nevertheless, there were some key drawbacks. Despite the Effective Trial Management initiatives, many victims were still forced to wait for long periods on the morning of the trial and many were still sent home

[56] The same was true of bad character applications under the Criminal Justice Act 2003.

without giving evidence. We have noted the view of many lawyers that it was impossible to completely eliminate such problems. This is fair, but it was also clear that communication between agencies and the willingness of the court (especially the magistrates' court) to enforce the case management system was sometimes absent.

On the morning of the trial, the flow of information from prosecutor to victim at the Crown Court was still somewhat hampered, and it was clear that fewer victims in Court C had even met the prosecutor in their case directly before giving evidence. The system in place of passing information (in some cases) from prosecutor to clerk to CPS caseworker to Witness Service volunteer to victim is clearly lacking in practicality. At all three courts, one particular unacceptable practice from the perspective of victim-centrality was for lawyers to only consult victims *after* decisions had been made regarding plea bargains or other case disposals. In addition, several aspects of the evidence-giving process were still not practical from the perspective of victims; especially the need to take handwritten notes at the magistrates' court, and the general frequency of interruptions this caused.

7.3.2 – Cultural centrality within the present system

Whilst many legal practitioners and other respondents had reached a stage whereby they would openly discuss and applaud the merits of assisting victims through the mechanisms described under 'practical centrality', many still did not carry these sentiments out in operational practice, or did so in only a limited fashion.

For example, some lawyers accepted the need to talk with victim before a trial, but generally did not like doing so and considered it 'difficult' or 'messy' work, especially in cases of domestic violence. There were also definite limits on what such advocates were prepared to say to victims, and some were expressly of the view that one should not encourage a victim to think of the prosecutor as 'on their side'. Some would also seek the approval of defence lawyers before saying very much at all to victims and witnesses. In addition, almost all advocates observed conducting trials referred to victims (amongst themselves) as 'complainants'. On questioning lawyers about this, many proved uncomfortable with the term 'victim' being applied before the finding of guilt.

Lawyers and court staff also had mixed views about the Witness Service. Whilst many considered them a vital resource, to others they still had a 'busybody' reputation and

some lawyers thought they gave inappropriate information and advice to witnesses. This last point was largely due to the fact that lawyers tend to value consistency and the adherence to strict procedural rules, which was very different from the way Witness Service volunteers carried out their roles. Arguably this represents a conflict which presently exists between 'legal' culture and 'volunteer' culture. This also reflects the point that, whilst many practitioners and court staff *attempted* to take a 'victim's eye view' of the proceedings, many were still culturally unable to. On this issue, it was interesting to notice some defence lawyers apparently using concern for the victim as a way of gaining tactical advantage. Especially in domestic violence cases, defence lawyers would often make much of the fact that a victim did not want to give evidence, and should not be made to go through with it.[57] This is interesting, because it demonstrates how 'concern for victims' is being incorporated within lawyers' tactical toolkits.

As we have seen, many lawyers were not truly conversant with the concept of seeking victims' opinions as to case disposition, even though many *said* they would always canvass the victim's views. In the magistrates' courts, most prosecutors would consistently explain matters to the victim after a case had failed to proceed, although in the Crown Court this was again more commonly left to CPS caseworkers. Also, in the magistrates' court, some prosecutors would deflect magistrates' intentions when they suggested bringing the victim into court for a personal explanation and thanks. As we have noted, this seemed to represent a conflict between 'new' and 'traditional' occupational cultures; one willing to involve the victim and the other less enthusiastic. It may also imply that individual 'court cultures' may be more developed in favour of victims than that of occupational cultures amongst criminal justice professions.

On the point of cracked and ineffective trials, most lawyers applauded the efforts of the Effective Trial Management Programme, but some believed it was ineffective. More generally, there was still a sense of agencies blaming each other for trials failing to proceed rather than always working effectively together to ensure this did not happen. As already noted, magistrates in particular did not seem especially confident in enforcing Effective Trial Management proceedings. In addition, many lawyers took the view that there was really very little one could do to prevent delays and trials failing to proceed on the day, largely because of the fickle, unorganised, nature of defendants.

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[57] Which was actually never witnessed in these observation sessions.

In the courtroom, on the morning of a trial court clerks and legal advisers clearly had victim and witness waiting times in mind, and would remind judges and magistrates of this issue, especially in the case of vulnerable or intimidated witnesses. Generally, however, there was a lack of consistency – amongst legal advisers in particular – on the extent to which they would actually raise this point with advocates. Judges and magistrates too seemed to have this issue in mind, and even Crown Court circuit judges were observed remarking on the victim's wait.

That said, almost all lawyers spoken to for this research were uncomfortable with the idea of staggered witness calling or allowing victims to take pagers out of the court. Court administrators did not favour this latter option because they considered many victims to be unreliable. In addition, there was also a pronounced lack of urgency about matters in the Crown Court, whereas in the magistrates' court, advocates were often watching the clock before a trial began because there was less time available to conduct the trial and less flexibility in the court lists. This clearly represents a difference of cultures between different levels of the criminal justice system.

During the evidential process, we have noted that greeting victims, calling them by name, giving them some explanation of the process, affording them breaks and thanking them afterwards have all permeated deeply into the occupational practices of most lawyers. Most lawyers were also completely accepting of witnesses bringing supporters into court with them, although there was more controversy over whether they should be allowed in video-link rooms. Lawyers were also generally aware of issues like whether the witness was facing the defendant by reason of the court's design, with some legal advisers having the defendant moved when this occurred. Nevertheless, some cultural precepts still worked against the victim, including the need for written notes in the magistrates' courts (perhaps reflecting the wider legal cultures' continued reliance on written documents) and the insistence that the victim face the bench or jury to give evidence.

It was also clear that advocates, magistrates, and judges were still very culturally reliant on demeanour and body language to 'read' witnesses. As we have seen, this often resulted in a dislike for video-linked evidence. Other cultural views on special measures were mixed, some believed they could influence conviction rates (either way) and some did not. Some were concerned about slipping evidential standards in pre-recorded

examination in chief, but many did not see a problem. Certainly, prosecutors were willing to make special measures applications in increasing numbers. That said, it was clear that as far as most advocates and court staff were concerned, special measures were generally only for 'ideal' victims and stereotypically vulnerable witnesses. Also, special measures were sometimes used 'against' victims by defence advocates when such victims subsequently wished to observe the remainder of the proceedings from the public gallery.

Returning to the evidence-giving process. It was clear that the majority of lawyers had accepted the occupational notion that one need not be overly hostile to victims in order to adduce evidence. In the same vein, references to character or 'misleading' the court were rare. Nevertheless, interrupting witnesses was still very much an occupational norm. In addition, most advocates were still of the view that the proper remit of victim's evidence was what they had put in their witness statement, and victims would be frequently stopped from giving any further details or attacked by defence lawyers when they did; much to the confusion of victim's themselves who – as noted previously – sometimes appeared not to understand the lawyer's evidential perspective, which of course again reflects a legal culture.

Another important point is that lawyers did not appear to vary their questioning style between victims and non-victim witnesses, nor did they make changes for vulnerable and intimidated witnesses giving evidence through special measures, although at interview many *said* they did. Nevertheless, results from Chapter 6 on the length of questioning and the percentage of time different witnesses spoke or contributed to proceedings confirm this finding. Overall, the implication is that it is not victims *per se* who are becoming culturally central in the minds of lawyers, because they are treated in the same way as witnesses in general.

The notion of including victim impact information at sentencing had also received wide cultural acceptance amongst practitioners, albeit mainly in cases of stereotypical or vulnerable victims. Judges and magistrates too had become used to seeking this sort of information out, with Crown Court judges reportedly leading the way. That said, it was obvious that benches had very clear ideas in mind of the sort of cases where victim personal statements might be useful, domestic violence cases in particular. In addition, almost all lawyers were very much opposed to emotionally charged statements being adduced as evidence, even at the sentencing stage. Beyond the trial process itself, there

were also indications that some police officers were confused as to the purposes of the scheme, and that they were taking victim personal statements in a very traditional, evidential manner.

Overall, the impression derived from interviewing court staff and legal practitioners, and from watching them work, was that most understood the rationale behind the new measures and schemes intended to provide services and support to victims and witnesses. Indeed, most thought this was a long overdue development and in principle accepted it in its entirety. Nevertheless, many had greater difficulty in actually adapting their practices to comply with this new philosophy. Certain cultural practices were still sacrosanct, such as the need to have all witnesses available from the start of a trial, the reliance on written notes at all three courts, and an apparent inability to engage fully with victims regarding the disposal of cases on the morning of a trial, in other words a denial of consultative participation. We have also seen that at least one district judge opposed 'making witnesses comfortable' to 'the ends of justice'[58]. In a victim-centred system, however, it is surely the case that victim comfort would be prioritised (albeit perhaps not to the extent that the process becomes 'easy') because such comfort would improve the quality of the evidence (and, importantly, the *account*) and this would be considered 'in the interest of justice'. Thus, in many cases the adapting culture of individual practitioners (or, perhaps, professions) seemed to be curtailed by aspects of the still prevailing, wider, legal culture.

In addition, many advocates and court personnel appeared to be working with very stereotypical notions of 'victimhood'. Hence the view that 'less innocent' – but probably more common – victims should not be afforded special measures. We also see this expressed through a reluctance to allow adults – especially adult males – the benefits of special measures, because they are not considered 'vulnerable': This attitude prompts the concern that only a certain category of victims are becoming culturally-central in the criminal justice system, a category which we know excludes far more victims than it embraces (Dignan, 2005)[59].

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[58] See page 300.

[59] The government's recent consultation on the law relating to rape and serious sexual assault suggests that adult witnesses in such cases may become automatically entitled to give evidence through pre-recorded examination in chief (Office for Criminal Justice Reform, 2006).

As noted in Chapter 6, there was a definite sense that, at Court B, victims, witnesses, and the witness service were accepted as part of the 'court community' to a far greater extent than at the other courts. This is an important finding, because it suggests the existence of individual 'court cultures' as opposed to the wider 'legal' culture or the more specific 'occupational cultures' of individual professions. It is key here that the same lawyers were generally working at both courts, hence the increased 'victims spirit' at Court B must be attributable to other factors. As noted previously, one possible explanation was the increased interaction at this court between the volunteer Witness Service and the court professionals, as their office/waiting room was situated right next to the two main trial courts. In addition, the Regional Director of the court (also a deputy district judge) seemed especially interested in the plight of victims and witnesses, as did the resident district judge. Hence, this may be a case of the culture of the court having been moulded from the top down.

Clearly more research will be needed to ascertain exactly how more localised working cultures are proliferated[60] but the position at Court B nevertheless emphasises the possibility that – given the right conditions – it is possible to adapt both the ingrained cultures within different professions, and the wider legal culture to become more sympathetic to victims and witnesses. These findings also imply that volunteers and professionals at courts should interact more to help resolve their 'conflicted' (ultra-consistent verses understanding and practical) working practices. This seems to imply that Victim Support and its Witness Service should have more say in the running of courts, and should especially have representation on the Local Criminal Justice Board.

7.3.3 – Accounts centrality within the present system

Accounts centrality was probably the least developed aspect of the model illustrated in Figure 2 within the current criminal justice system. The reasons for this have for the most part already been covered in other contexts. As such, the accounts presented by victims were restricted by advocates' firm intention to limit a victim's evidence to that which was written in their statement. The interrupting of witnesses whilst giving evidence, the lawyer's dislike of 'excessively emotional' outbursts, the exclusion of victim impact evidence from the main trial, and lingering concerns over hearsay all served to limit the accounts made by victims during the evidential process. It was also

[60] And is this is possibly more a sociological question than a criminological or victimological one *per se*.

clear from the standardised way that lawyers adduced evidence from *any* witness that the story told by the victim was being given no special consideration.

In addition, the worrying failure of prosecutors' to give some 'officially' vulnerable and intimidated witnesses and victims the choice over whether or not to give evidence through special measures almost certainly restricted some of those witnesses' ability to make full accounts[61]. In any case, our t-test analyses of mean percentages of time speaking by witnesses during evidence with and without special measures[62] indicates that (aside form pre-recorded examination in chief) most of these facilities do not in fact increase the verbal contribution of witnesses. Hence, lawyers' cultural precepts about how evidence should be adduced from victims may be far more relevant.

Furthermore, in coming to agreements between themselves in the courtroom about case dispositions – without consulting the victim – lawyers again effectively negotiated victims' accounts for them.

Despite this, however, it can be maintained that this is a system capable of accepting victims' wider accounts without fundamental reform. As has already been argued numerous times in this thesis, this is demonstrated most readily by the acceptance of a 'free narrative' phase in the evidence of children speaking through pre-recorded examination in chief. During these sessions, benches of magistrates and district judges and juries clearly demonstrated the ability to put 'irrelevant' matters from their minds, and lawyers clearly relied on them to do so. It was also clear from watching trials and interviewing advocates that rules like 'hearsay' are becoming less relevant in any event. Hence, with proper training on the part of judges and magistrates, and careful directions given to juries – who tended to see edited videos which nonetheless contained a wider category of information – a broader category of 'accounts-based' evidence from victims could be accepted within this system without fundamentally reforming it

7.3.4 – A victim-centred system?

Referring back to the hypotheses made in Chapter 1, in relation to my final research question I suggested that the greatest developments in the criminal justices system – in relation to victim-centeredness and since previous studies of this sort – would be in the

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[61] Especially when, in the Crown Court, child witnesses were not permitted to have any supporters with them in the video-link room apart from ushers.

[62] See Chapter 6.

practical infrastructure needed to assist victims. I then predicted that the *culture* of criminal justice professionals, courts, and the wider legal culture would be "somewhat softened" to the plight of victims and witnesses (p.12). From the outset, I suspected that 'accounts' would not feature too heavily in the present system, and that numerous features of this system would restrict the accounts made by victims.

Generally, these hypothesis appear correct, although I would admit that cultural centrality of victims around the courts I studied was more developed than I would have expected. Overall, I came across considerably fewer 'crusty' or 'old school' lawyers than expected; dismissive of victim involvement or support and critical of the government's stance. Even defence lawyers by and large accepted the measures and considered most of them to be:

> "A step forward in British justice" (a defence solicitor appearing at Court B).

Whilst the occupational applicability of such sentiments was perhaps lagging behind, the will was certainly there for the vast majority of legal practitioners the level of professions and courts, the problem rather seemed to be achieving real change in the overriding legal culture which still largely dictated their actions in practice.

What I saw operating in the area under review was not a victim-centred system in the 'ideal' sense postulated in Figure 2. Nevertheless, it was definitely a system boasting the clear potential to *become* more victim-centred without resorting to truly fundamental reform and, generally speaking, one that was further along the way to achieving this goal than I had anticipated.

7.4 – FINAL POINTS

I have never intended to suggest during the course of this thesis that 'victim-centred criminal justice' is in itself a 'good thing' or a 'bad thing'. Rather, the purpose of this study has been to examine the government's pledge to put victims 'at the heart' of the criminal justice system, to find out where it came from and what it means. If nothing else, this thesis has demonstrated the complexity of such disarmingly simple questions, and the multifaceted nature of any possible answer.

What is certain is that victims of crime have become increasingly important in political and policy-making spheres and – given the nature of policy-making – it seems clear that

they will remain high on the agenda for criminal justice reformers, administrators and practitioners for the foreseeable future. The knock-on effect of this is that researchers will continue to be called upon to investigate various aspect of victimisation, and the needs of those who are victimised. It is, however, worrying that so many of these reforms seem to have occurred without directly consulting victims themselves, and certainly without any accompanying *observational* data on how they have been implemented throughout the country.

One area of particular concern for researchers will be the continued development of our understanding of 'victimhood', and the proliferation of the findings amongst policy-makers and – perhaps more importantly – practitioners, and the legal community and whole, so the needs of *these* victims can be adequately met. In addition, there is a great deal more work to be done on the account-making needs of crime victims and their applicability to the criminal justice system.

It is my hope that this thesis will make some contribution to these upcoming debates, in terms of its findings and its methodology. On this latter point, it is hoped that this project will help demonstrate the usefulness and applicability of the presently unpopular ethnographic technique, certainly amongst British criminological researchers and government departments. Ethnography helps us understand the criminal justice process and the victims *within* the criminal justice process – warts and all – without reducing them to statistics which (whilst useful) are sometimes in danger of dehumanising a process fundamentally characterised by human interaction. In so doing, we are in danger of committing the very offence so often levied at the criminal justice process; revictimising those who have already suffered greatly.

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APPENDIX 1: OBSERVATION FORMS

The following pre-printed forms were used to assist note taking during the trial observation session. The forms were not used as prescriptive and were always supplemented by less structured notes and research memos (Glaser and Strauss, 1967).

Form 1: General Trial Overview

Part A: Trial Overview

Trial Reference Number:	01	**Expected Start Time (as listed)**	:
		Actual Start Time	:
Start Date:	/ /	**Expected Duration (as listed):**	
		End Time	:
End Date:	/ /	**Charge(s):**	**Number of Defendants:**
Courthouse:	A/B/C	**Composition of Bench**	Signal District Judge / Three Lay Magistrates / Circuit Judge / High Court Judge
Courtroom (as listed):		**Trial was:**	Effective / Ineffective / Cracked / Vacated
Courtroom (if re-listed on day):		*Notes:*	
Youth or Adult Court?	Youth / Adult		
Does the victim attend the trial? <Tick ☑>			
Victim attends whole trial as observer	☐		
Victim attends portion of trial as observer (note times)	☐ →		
Victim attends trial as witness	☐		

Part B : Ineffective, Cracked, Vacated and Late Trials

1) Trial was:

Ineffective Cracked Vacated Late in starting

2) Why was the trial ineffective, cracked, vacated or late in commencing: <indicate multiple reasons if necessary>

- ☐ Police witness(es) not present
- ☐ Civilian witness(es) not present
- ☐ Victim/Complainant witness(es) not present
- ☐ CPS drops case / offers no evidence
- ☐ Listings issues (double-booking, priority of another listed case etc.)
- ☐ Change of plea to guilty
- ☐ Defendant bound over
- ☐ Equipment required for special measures is not working
- ☐ Case is dismissed after the prosecution's evidence, following submissions from defence, on the grounds that there is no case to answer
- ☐ Trial begins but prosecutor halts the trial halfway through delivering his/her case and offers no further evidence

Others:

3) For ineffective, cracked or late trials; have witnesses attended court (on time) expecting to give evidence? <Tick ☑ and give number if known>

- ☐ Police witnesses _____
- ☐ Civilian witnesses _____
- ☐ Of which were Victim/Complainant witnesses _____

4) Prior to the dismissal or adjournment of cracked/ineffective trials, is the position of any witnesses attending court expecting to give evidence mentioned or considered by the following actors? <Tick ☑>				
	Yes	**Yes, but prompted by another actor →**	**(Prompter)**	**No**
By the Magistrates / Judge?	☐	☐		☐
By the Legal Adviser / Clerk?	☐	☐		☐
By the prosecution solicitor/barrister?	☐	☐		☐
By the defence solicitor/barrister?	☐	☐		☐
By the usher?	☐	☐		☐
By witness service staff/volunteers?	☐	☐		☐
	☐	☐		☐
	☐	☐		☐

5) Have attending witnesses been consulted at all regarding convenient dates for adjourned trials? <Delete as appropriate>	Yes / No / Unclear / Only Police Witnesses / Only Civilian Witnesses

6) Prior to the dismissal or adjournment of cracked/ineffective trials, do *police* [P] *civilian* [C] and/or *victim* [V] witnesses attending court to give evidence receive an apology, explanation and/or thanks? <Tick ☑>				
Actor	**Witnesses receive an apology**	**Witnesses receive thanks for their time**	**Witnesses receive explanation for adjournment**	**Notes**
Magistrates / Judge addresses witnesses personally in court	☐ [P] ☐ [C] ☐ [V]	☐ [P] ☐ [C] ☐ [V]	☐ [P] ☐ [C] ☐ [V]	
Magistrates / Judge asks solicitors / barristers to convey the court's apologies / thanks to witnesses or an explanation	☐ [P] ☐ [C] ☐ [V]	☐ [P] ☐ [C] ☐ [V]	☐ [P] ☐ [C] ☐ [V]	
Legal Advisor / Clerk addresses witnesses personally in court	☐ [P] ☐ [C] ☐ [V]	☐ [P] ☐ [C] ☐ [V]	☐ [P] ☐ [C] ☐ [V]	
Legal Advisor / Clerk asks solicitors / barristers to convey the court's apologies / thanks to witnesses or an explanation	☐ [P] ☐ [C] ☐ [V]	☐ [P] ☐ [C] ☐ [V]	☐ [P] ☐ [C] ☐ [V]	

7) What time are witnesses released?	:

Form 2: Witness Overview

Witness No. _____

Prosecution or Defence:	**P / D**	**Witness Number:**		**Sex:**	**M / F**
Police or Civilian, Defendant or Victim:	**P / C** **D / V**	**Age: <Record age if possible or tick the relevant age bracket ☑>**			
		Age (if known):			
Notes:		Adult			☐
		Aged 17 – 18			☐
		Aged 16 or under (automatically 'vulnerable')			☐
Start and end of Examination in Chief	:	To	:		**No CE, RE or Q occurs <Tick ☑>**
Start and end of Cross-Examination	:	to	:		☐
Start and end of Re-examination	:	to	:		☐
Start and end of questioning by Bench	:	to	:		☐

Breaks in examination in chief, cross-examination, re-examination or questioning:					
Examination in Chief, Cross-examination, Re-examination or Questioning?	**Reason**	**Does the witness leave the box (or is the video link turned off)?**	**Start**	**To**	**End**
E / CE / RE / Q		Yes / No	:	to	:
E / CE / RE / Q		Yes / No	:	to	:
E / CE / RE / Q		Yes / No	:	to	:
E / CE / RE / Q		Yes / No	:	to	:

Arriving to Give Evidence

Does the witness have any special needs (specifically mentioned or otherwise apparent)?

☐ Mental disorder

☐ Learning disabilities (including reading difficulties)

☐ Physical disorder or illness

Other_____

Does the witness bring any witness service volunteers into the courtroom with him/her?

Yes / No

If so, how many? _____

Where do the witness service volunteers sit?

Public Gallery / Press and Probation Seats Other_____

Does the witness bring any other supporters into the courtroom with him/her?

Yes / No

If so, how many? _____

Where do these other supporters sit?

Public Gallery Probation/Press Seating Other_____

Is the witness invited to sit down before examination in chief?

Yes / No

If no, when is the witness invited to sit down?

Isn't :

When does the witness actually sit down?

Doesn't : Immediately

Who enquires whether the witness might sit down?

☐ . Bench invites witness unprompted

☐ Bench is prompted by lawyer calling the witness

☐ Bench is prompted by clerk / legal adviser

Other_____

Does the bench speak to the witness before examination in chief (to invite him/her to sit down, or for other reasons)?

Yes / No

If 'yes, how does the bench address the witness? <Circle more than one answer if necessary>

First Name Mr/Mrs/Miss_____ You or something similar_____

Other(s)_____

Which of the answers to question 15 is predominantly used?

First Name Mr/Mrs/Miss_____ You or something similar_____

Other(s)_____

Is the witness given a drink before examination in chief?

Yes / No

If not, when is the witness given a drink?

Isn't :

Does the witness actually take a drink?

Yes / No

Form 3: Witness Summary

WITNESS EVIDENCE SUMMARY OBSERVATION TABLE

	Hostility of questioning (1-6)	Witness Prepared-ness (1-6)	Does lawyer call witness by name? (Y/N)	Name Frequency (Tally)	Does the witness seem mindful of the defendant? (1-6)	To what extent is the impact of the crime on the victim covered? (0-6)	Are there any references to the witness' character? (Y/N)	Frequency Of Reference to the witness' character (1-6)	To what extent does the witness appear to have said everything they wanted? (1-6)	Is the witness thanked? (Y/N)	Is the witness told he/she is 'mistaken'? (1-6)
I											
EC											
CE											
RE											
QB											

	Is the witness told he/she has 'mislead' the court? (1-6)	How many times is the witness called a liar? (No.)	Does the bench speak to the witness other than during QBB? (Y/N)	Does the bench refer to the witness by name? (Y/N)	Frequency of bench referring to witness by name? (Tally)	Does the bench thank the witness? (Y/N)	Does the witness leave or go to the public gallery? (L/G)
I							
EC							
CE							
RE							
QB							

Key

I	=	Initial observations
EC	=	Examination in chief
CE	=	Cross-examination
RE	=	Re-examination
QB	=	Questioning by bench

Calling lawyer tells witness about:

Speaking Slowly	☐
Speaking Loudly	☐
Speaking towards the bench	☐
The noting that needs to be done	☐
The possible need to stop him/her occasionally	☐

Use this table to record whether the witness was required to reveal personal information. The horizontal axis is for plotting 'how personal' the information was (from 'Not at all personal' to 'Extremely Personal') and this should be equated with the frequency with which such information was asked for on the vertical axis (from 'Never' to 'Frequently').

	Not at all personal	A little personal	To some extent personal	Quite personal	Very personal	Extremely personal
Never	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐
On one or two occasions	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐
On a few occasions	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐
On quite a few occasions	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐
On many occasions	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐
Frequ-ently	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐	EC ☐ CE ☐ RE ☐ QB ☐

How does the witness react to this questioning; initially and as the questioning continues?
For each reaction, try to record the intensity of that reaction using the scale:
1 = 'Not' (e.g.) angry
2= 'A little' angry
3 = 'To some extent' angry
4 = 'Quite' angry
5 = 'Very' angry
6 = 'Extremely' angry

Initial Reaction(s)	Intensity of Reaction (1-6)	Reaction(s) Developing as questioning continues	Intensity of Reaction (1-6)
Calm	EC	Calm	EC
	CE		CE
	RE		RE
	QB		QB
Confident	EC	Confident	EC
	CE		CE
	RE		RE
	QB		QB
Angry	EC	Angry	EC
	CE		CE
	RE		RE
	QB		QB
Vindictive (against defendant)	EC	Vindictive (against defendant)	EC
	CE		CE
	RE		RE
	QB		QB
Frightened or Intimidated	EC	Frightened or Intimidated	EC
	CE		CE
	RE		RE
	QB		QB
Confused	EC	Confused	EC
	CE		CE
	RE		RE
	QB		QB
	EC		EC
	CE		CE
	RE		RE
	QB		QB
	EC		EC
	CE		CE
	RE		RE
	QB		QB
	EC		EC
	CE		CE
	RE		RE
	QB		QB

What are the main reasons the witness has not been able to say everything he/she wanted to say? <Tick ☑ and add others if necessary>		
Reasons	**☑**	**Applicable to which sections of questioning? <circle>**
The witness tried to say things the lawyer/bench considered irrelevant	☐	EC / CE / RE / QB
The witnesses wanted to say things prohibited by law (hearsay etc.)	☐	EC / CE / RE / QB
The witness tried to say things detrimental to the lawyer's case	☐	EC / CE / RE / QB
The witness had trouble expressing himself/herself	☐	EC / CE / RE / QB
The witness was 'overly' emotional	☐	EC / CE / RE / QB
The witness was intimidated by the setting	☐	EC / CE / RE / QB
The witness was intimidated by the defendant	☐	EC / CE / RE / QB
	☐	EC / CE / RE / QB
	☐	EC / CE / RE / QB
	☐	EC / CE / RE / QB
	☐	EC / CE / RE / QB
	☐	EC / CE / RE / QB

Time usage whilst giving evidence:						
	Total Time	% of time in which witness was speaking	% of time in which prosecution lawyer was speaking	% of time in which defence lawyer was speaking	% of time in which bench was speaking	% of time in which LA was speaking
Examination in chief						
Cross-examination						
Re-examination						
Questioning by Magistrates / DJ						
Total Time Giving Evidence						

Please record details of any instances *other than* during the QBB in which the Bench speaks to the witness:		
Details	**Time**	**During which part of the trial?**
Telling the witness he/she can sit down	:	Before EC
	:	
	:	
	:	
	:	
	:	
	:	
	:	
	:	

After giving evidence does the bench say anything else to the witness apart from thanking him/her?

Bench tells him/her he can leave or stay in the public gallery ☐

Bench tells him not to speak to other witnesses who are waiting ☐

Bench JUST thanks witness – say nothing else ☐

Witness Interruption Sheet		
Section of Evidence	**Interrupting Actor**	**Reason For Interruption**
EIC		
CE		
RE		
QB		

APPENDIX 2:
COURT USERS SURVEYS

Below are the court users surveys distributed at Court B. The first-wave version of the survey has been omitted, as the second version was substantially the same with minor updates.

Wave 2

Court Users' Questionnaire

My name is Matthew Hall and I am a Ph.D. research student at the University of Sheffield's Department of Law. My research is mainly concerned with people's experience of coming to court to give evidence; particularly when they have been the victim of crime. In support of this work, I'm hoping to gather information from members of the public coming to the court, especially those coming to give evidence (either as victims, witnesses or defendants) and also those who attend to support them. The results will eventually be used in my Ph.D. thesis and also shared with the court.

As such, I would be very grateful if you could spare a few minutes to complete the following (mostly tick-box) questionnaire and then to return it to the usher. Please be assured that **all answers will be kept entirely anonymous – no one at court will be able to identify what you have said**. To this end, please do not write anything which might identify you. It is also important that you don't write anything about the specific criminal case you've been involved with today, including the events leading up to it.

Many thanks indeed for your time,

Matthew Hall

Matthew Hall,
University of Sheffield

1) Please tick your reason for attending court today:

☐ I have attended as a defendant.

☐ I have attended to support a defendant by giving evidence on his/her behalf.

☐ I have attended to support a defendant by accompanying him/her into the courtroom.

☐ I have attended to support a person giving evidence on behalf of the defence in a trial by accompanying him/her into the courtroom.

☐ I have attended because I have been a victim of crime and am giving evidence for the prosecution.

☐ I have attended because I have been a victim of crime and am giving evidence for the defence.

☐ I have attended because I have been a victim of crime and want to observe the case.

☐ I was not the victim of the crime myself, but have attended to be a witness for the prosecution.

☐ I have attended to support a person giving evidence on behalf of the prosecution by accompanying him/her into the courtroom.

☐ I have attended court just to watch.

☐ I have attended court for some other reason - Please specify_____

2) If you attended court in order to give evidence, for either the prosecution or defence, did you have any contact with the court's Witness Service?

i) **In the court building today?** Yes / No
ii) **Before coming to court?** Yes / No

3) If you attended court in order to give evidence, for either the prosecution or defence, were you shown around a courtroom before any proceedings began?

☐ Yes, today ☐ Yes, sometime before the day of the trial ☐ No

4) If you attended to give evidence, for either the prosecution or defence, did you receive a copy of the 'Witness in Court' booklet before coming to court today?

☐ Yes ☐ No ☐ Can't remember ☐ Yes, but didn't get a chance to read it

5a) If you have been a victim of crime, before coming to court were you ever given the opportunity to make a statement, written in your own words, detailing the effects of the crime on you and its impact? (These are known as 'Victim Personal Statements' and are different from regular witness statements).

☐ Yes ☐ No ☐ Not sure ☐ Not a victim

5b) If so, did you actually make such a statement? Yes / No

6) Have you actually given evidence in court today? Yes / No

↓↓↓↓↓ **If you DID give evidence in court today, please answer questions 7 – 12a** ↓↓↓↓↓

→→ →→ **If you did NOT give evidence in court today, please answer questions 12b-13** →→→→

→→ →→ **WHETHER OR NOT you gave evidence, please answer questions 14 - 23**→→→→

↓ Start here if you GAVE evidence today ↓

7) If you gave evidence, did anyone other than a Witness Support volunteer accompany you into the courtroom to support you? Yes / No

8) If you gave evidence, did a Witness Support volunteer accompany you into the courtroom? Yes / No

9) If you gave evidence, did you have any difficulty hearing the questions you were asked in the courtroom?

not at all	once or twice	on a few occasions	on several occasions	on quite a few occasions	on many occasions
☐	☐	☐	☐	☐	☐

10) If you gave evidence, please rate how you felt whilst you were being asked questions by the prosecution lawyer. For each reaction please indicate the extent to which you experienced that reaction by circling the relevant point of the scale:

Reactions	Rating					
	1 not at all	2 very little	3 to some extent	4 quite a bit	5 very much	6 extremely
Calm	1	2	3	4	5	6
Confident	1	2	3	4	5	6
Intimidated by the defendant	1	2	3	4	5	6
Intimidated by the lawyer asking questions	1	2	3	4	5	6
Intimidated by the courtroom setting	1	2	3	4	5	6
Worried	1	2	3	4	5	6
Scared	1	2	3	4	5	6
Angry	1	2	3	4	5	6

11) If you gave evidence, please rate how you felt whilst you were being asked questions by the defence lawyer. For each reaction please indicate the extent to which you experienced that reaction by circling the relevant point of the scale:

Reactions	Rating					
	1 not at all	2 very little	3 to some extent	4 quite a bit	5 very much	6 extremely
Calm	1	2	3	4	5	6
Confident	1	2	3	4	5	6
Intimidated by the defendant	1	2	3	4	5	6
Intimidated by the lawyer asking questions	1	2	3	4	5	6
Intimidated by the courtroom setting	1	2	3	4	5	6
Worried	1	2	3	4	5	6
Scared	1	2	3	4	5	6
Angry	1	2	3	4	5	6

12a) If you gave evidence, how long did you have to wait before being called?

☐Less than 1 hour ☐Over 1 hour ☐Over 2 hours ☐Over 3 hours ☐ Longer - how long?_____

↓Start here if you DID NOT give evidence today↓

12b) If you attended to give evidence for either the prosecution or defence, but never actually did so, how long did you wait before being told you could leave the court building?

Less than 1 hour ☐ Over 1 hour ☐ Over 2 hours ☐
Over 3 hours ☐ Longer ☐ How Long?_____

13a) If you attended to give evidence for either the prosecution or defence, but never actually did so, did you receive an explanation why you would not be giving evidence?

☐ Yes, a helpful one ☐Yes, an unhelpful one ☐ No

13b) If you have answered 'Yes' to Question 13a, from whom did you receive this explanation?

☐ Your lawyer, outside the courtroom ☐ From another lawyer, inside the courtroom
☐ From the Magistrates / District Judge, inside the courtroom
☐ From someone else – Please specify_____

↓Continue answering questions from here WHETHER OR NOT you gave evidence today↓

14) How would you rate the following facilities at the court? For each facility please indicate your rating by circling the relevant point of the scale:

Facilities	Rating 1 good	2 satisfactory	3 unsatisfactory	4 poor	5 didn't use
Seating	1	2	3	4	5
Cafeteria/refreshments	1	2	3	4	5
Witness Waiting Area	1	2	3	4	5
Toilets	1	2	3	4	5
Car Parking	1	2	3	4	5
Proximity to public transport	1	2	3	4	5

15) Overall, how satisfied were you with the facilities available at the court?

completely satisfied	very satisfied	quite satisfied	quite dissatisfied	very dissatisfied	completely dissatisfied
☐	☐	☐	☐	☐	☐

16) If you have any further comments or observations about the court's facilities please record them below.

_____

_____

_____

17) How would you rate the following sources of information? For each source please indicate your rating by circling the relevant point of the scale. Please also indicate <u>one</u> source which was the <u>most</u> useful and <u>one</u> source which was the <u>least</u> useful by ticking the relevant boxes:

Information Sources	Rating 1 good	2 satisfactory	3 unsatisfactory	4 poor	5 didn't use	Most Useful	Least Useful
Reception Desk	1	2	3	4	5	☐	☐
Witness Service	1	2	3	4	5	☐	☐
Signs around court	1	2	3	4	5	☐	☐
Courtroom Plans	1	2	3	4	5	☐	☐
Security Staff	1	2	3	4	5	☐	☐
Leaflets picked up at court	1	2	3	4	5	☐	☐
Leaflets received before coming to court	1	2	3	4	5	☐	☐
P.A. system	1	2	3	4	5	☐	☐
Case listings on wall near reception	1	2	3	4	5	☐	☐
Court Usher(s)	1	2	3	4	5	☐	☐

18) Overall, how satisfied were you with the provision of information <u>before</u> and <u>during</u> your court visit?

	completely satisfied	very satisfied	quite satisfied	quite dissatisfied	very dissatisfied	completely dissatisfied
Before	☐	☐	☐	☐	☐	☐
During	☐	☐	☐	☐	☐	☐

<u>→→Questions Continue On Next Page →→</u>

19) How satisfied were you with the conduct/work of the following people at the court? For each person please indicate your rating by circling the relevant point of the scale

1	2	3	4	5	6	7
extremely satisfied	very satisfied	quite satisfied	quite dissatisfied	very dissatisfied	extremely dissatisfied	no opinion

People	Rating 1 2 3 4 5 6 7 *See above for scale key (extremely satisfied → no opinion)*
Reception Staff	1 2 3 4 5 6 7
Security Staff	1 2 3 4 5 6 7
Court Ushers	1 2 3 4 5 6 7
Prosecution Lawyer	1 2 3 4 5 6 7
Defence Lawyer	1 2 3 4 5 6 7
Witness Service Volunteers	1 2 3 4 5 6 7
Court Legal Adviser	1 2 3 4 5 6 7
Magistrates / District Judge	1 2 3 4 5 6 7

20) If you attended to <u>give evidence</u> for either the prosecution or defence, please rate how confident you felt about the following factors <u>before</u> coming to court by circling the relevant point of the scale:

1	2	3	4	5	6	7
extremely confident	very confident	quite confident	quite worried	very worried	extremely worried	no feelings on the matter

Reactions	Rating 1 2 3 4 5 6 7 *See above for scale key (extremely confident → no feelings)*
Finding the court building	1 2 3 4 5 6 7
Finding the courtroom	1 2 3 4 5 6 7
Answering questions from the prosecution lawyer	1 2 3 4 5 6 7
Answering questions from the defence lawyer	1 2 3 4 5 6 7
Making yourself heard in the courtroom	1 2 3 4 5 6 7
Sounding confident in the courtroom	1 2 3 4 5 6 7
Remembering relevant details to answer questions	1 2 3 4 5 6 7
Giving evidence in front of the defendant (Leave blank if you were the defendant)	1 2 3 4 5 6 7

Demographic Information

Could you tell me something about yourself:

21) Are you male or female? Male / Female

22) How old are you? ☐ Under 17 ☐ 17 – 34 ☐ 35 – 54 ☐ 55+

23) Would you describe yourself as:
☐ White ☐ Black ☐ Asian ☐ Chinese ☐ Of mixed ethnic origin
☐ Other - Please specify_____

Finally, if you have been a victim of crime and feel you would be willing to discuss your experience of the criminal justice system in person for the purposes of this research project (see the description on the first page of this questionnaire) please leave your name and contact details in the space below.

All information will be kept entirely confidential and anonymous.

_____

_____

_____

_____

_____

THANK YOU for taking the time to complete this questionnaire. Now please return it to the usher

Wave 3

Court Users' Questionnaire

My name is Matthew Hall and I am a Ph.D. research student at the University of Sheffield's Department of Law. My research is mainly concerned with people's experience of coming to court to give evidence. In support of this work, I'm hoping to gather information from members of the public who have given evidence in court. The results will eventually be used in my Ph.D. thesis and also shared with the court.

As such, I would be very grateful if you could spare a few minutes to complete the following (mostly tick-box) questionnaire and then to return it in the prepaid envelope supplied. Please be assured that **all answers will be kept entirely anonymous – no one at court will be able to identify what you have said**. To this end, please do not write anything which might identify you. It is also important that you don't write anything about the specific criminal case you've been involved with today, including the events leading up to it.

Many thanks indeed for your time,

Matthew Hall,
University of Sheffield

1) Please indicate your reason for attending court to give evidence today:

☐ I have attended as a defendant.

☐ I have attended to support a defendant by giving evidence on his/her behalf.

☐ I have attended because I have been a victim of crime and am giving evidence for the prosecution.

☐ I have attended because I have been a victim of crime and am giving evidence for the defence.

☐ I was not the victim of the crime myself, but have attended to be a witness for the prosecution.

☐ I am giving evidence for some other reason - Please specify_____

2) When you gave evidence, did anyone other than a Witness Service volunteer accompany you into the courtroom to support you? Yes / No

3) When you gave evidence, did a Witness Service volunteer accompany you into the courtroom? Yes / No

4) Did you have any difficulty <u>hearing</u> the questions you were asked in the courtroom?

not at all	once or twice	on a few occasions	on several occasions	on quite a few occasions	on many occasions
☐	☐	☐	☐	☐	☐

5) How long did you have to wait before being called?

Less than 1 hour ☐ Over 1 hour ☐ Over 2 hours ☐

Over 3 hours ☐ Longer ☐ How Long?_____

6) Please rate how you felt whilst you were being asked questions by the <u>prosecution</u> lawyer. For each reaction please indicate the extent to which you experienced that reaction by circling the relevant point of the scale:

Reactions	Rating					
	1 not at all	2 very little	3 to some extent	4 quite a bit	5 very much	6 extremely
Calm	1	2	3	4	5	6
Confident	1	2	3	4	5	6
Intimidated by the defendant	1	2	3	4	5	6
Intimidated by the lawyer asking questions	1	2	3	4	5	6
Intimidated by the courtroom setting	1	2	3	4	5	6
Worried	1	2	3	4	5	6
Scared	1	2	3	4	5	6
Angry	1	2	3	4	5	6

7) Please rate how you felt whilst you were being asked questions by the <u>defence</u> lawyer. For each reaction please indicate the extent to which you experienced that reaction by circling the relevant point of the scale:

Reactions	Rating					
	1 not at all	2 very little	3 to some extent	4 quite a bit	5 very much	6 extremely
Calm	1	2	3	4	5	6
Confident	1	2	3	4	5	6
Intimidated by the defendant	1	2	3	4	5	6
Intimidated by the lawyer asking questions	1	2	3	4	5	6
Intimidated by the courtroom setting	1	2	3	4	5	6
Worried	1	2	3	4	5	6
Scared	1	2	3	4	5	6
Angry	1	2	3	4	5	6

Demographic Information

Finally, could you tell me something about yourself:

8) Are you male or female? Male / Female

9) How old are you? ☐ Under 17 ☐ 17 – 34 ☐ 35 – 54 ☐ 55+

10) Would you describe yourself as:
☐ White ☐ Black ☐ Asian ☐ Chinese ☐Of mixed ethnic origin
☐ Other - Please specify_____

THANK YOU for taking the time to complete this questionnaire. Now please return it in the supplied envelope

Wave 4

Ph.D. Research Questionnaire

My name is Matthew Hall and I am a Ph.D. research student at the University of Sheffield's School of Law. My research is mainly concerned with people's experience of coming to court to give evidence, particularly when they have been the victim of crime. In support of this work, I'm hoping to gather information from witnesses who have given evidence in court. The results will eventually be used in my Ph.D. thesis and also shared with the court and my hope is that this might assist in the better treatment of victims and witnesses in the criminal trial procedure

As such, I would be very grateful if you could spare a few moment to answer four questions about your experience at court today

Many thanks indeed for your time,

Matthew Hall,
University of Sheffield

Respondent's Status (tick more than one box if applicable):

Prosecution witness ☐ Defence witness ☐ A victim of crime ☐

Respondent's Sex:

Male ☐ Female ☐

Respondent's Age:

Under 17 ☐ 17-34 ☐ 35-54 ☐ 55+ ☐

Respondent's Ethnicity

White ☐ Black ☐ Asian ☐ Chinese ☐

Of mixed ethnic origin ☐

Other ☐ (please specify)_____

Question1

Having just given evidence, how are you feeling at the moment (tick more than one box if applicable)

Happy	☐	Satisfied	☐	Frustrated	☐
Relieved	☐	'Ok'	☐	Scared	☐
Angry	☐	Confused	☐	Worried	☐
Unhappy	☐				
Other	☐	(please specify)_____			

Question 2

How did you feel whilst you were giving evidence?

Happy	☐	Satisfied	☐	Frustrated	☐
Relieved	☐	'Ok'	☐	Scared	☐
Angry	☐	Confused	☐	Worried	☐
Unhappy	☐	Calm	☐	Confident	☐
Intimidated	☐	By whom?_____			
Other	☐	(please specify)_____			

Question 3

Was giving evidence easier than you thought it would be or harder or about the same?

Easier ☐ Harder ☐ About the same ☐

Question 4

Did you get to say everything you wanted to say?

Yes ☐ No ☐ To some extent ☐

APPENDIX 3: TIMELINE OF VICTIM 'POLICIES' AND REFORM IN ENGLAND AND WALES

1950s – 1996

- 1951 - Margaret Fry publishes *Arms of the Law*, arguing in favour of state compensation for victims of crime.
- 1964 - Non-statutory Criminal Injuries Compensation Scheme introduced.
- 1972 - Compensation orders introduced.
- 1979 - Creation of the National Association of Victim Support Schemes.
- 1985 - United Nations' *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.*
- 1985 - Council of Europe *recommendation on the position of the victim in the framework of criminal law and procedure.*
- 1986 - The Criminal Injuries Compensation Scheme is placed on a statutory footing.
- 1989 - The U.N. publishes its *Guide for Practitioners* on the implementation of the 1985 declaration.
- 1990 - Publication of the first Victim's Charter.
- 1990 - Home Office Circular 60/90 issued to police forces on the treatment of domestic violence victims.
- 1991 - Criminal Justice Act 1991 allows certain child witnesses to give evidence via pre-recorded examination in chief.
- 1991 - Home Office agrees to fund Victim Support's Crown Court Witness Service.
- 1992 - Guidance for police officers conducting recorded interviews with children is distributed in a *Memorandum of Good Practice.*
- 1994 (April) - The murder of Stephen Lawrence.
- 1994 (November) - JUSTICE creates a committee on the role of the victim in criminal justice.
- 1994 - Witness intimidation is made an offence under s.51 of the Criminal Justice and Public Order Act 1994.
- 1996 - Home Office announces that a Witness Service is now operating in every Crown Court centre.

- 1996 - The first Victim's Charter is replaced just before New Labour comes to power by the second Victim's Charter, launching Victim Statement and One Stop Shop pilots.

1997-1998

- 1997 - Labour's election manifesto pledges greater protection for victims in rape and serious sexual offence trials and those subject to intimidation, including witnesses.
- 1998 (February) - Victim Support launches its 'Victim Supportline' with the aid of a Home Office grant.
- 1998 (June) - *'Speaking up for Justice'* report published from the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System.
- 1998 - JUSTICE Committee report published.
- 1998 - Glidewell Review of the Crown Prosecution Service.
- 1998 - Introduction of National Crime Recording Standards gives more weight to victims' own views in the recording of crime by the police.
- 1998 - Report on Victim Statement and One Stop Shop pilots.
- Crime and Disorder Act 1998 creates racially aggravated crimes.
- Human Rights Act 1998.

1999-2000

- 1999 - Further report on the use being made of Victim Statements.
- 1999 - Home Office Criminal Justice Strategic Plan for 1999-2001 published with an objective to meet the needs of victims and witnesses within the criminal justice system.
- 1999 - Macpherson report on the failure of the investigation into the death of Stephen Lawrence.
- 1999 - *Action for Justice* sets out the government's plans for implementing the *Speaking up for Justice* report.
- 1999 (July 27th) - Royal assent given to Youth Justice and Criminal Evidence Act, introducing special measures into statute.
- 1999 - Lord Chancellor's Department publishes guidance to Magistrate Court Committees on a 'Model Quality of Service Charter' to be applied in all magistrates' courts.
- 1999 - United Nations publishes its *Guide for Policy Practitioners on the implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.*
- 1999 - Council of Europe *recommendation on penal matters.*

- 1999 - National Probation Service publishes report *The Victim Perspective: Ensuring the Victims Matters* to facilitate its new victim contact roles under the second Victim's Charter.
- 2000 (September) - The *Recognising Capability* training pack is issued to multiple criminal justice agencies in order to improve the treatment and identification of vulnerable or intimidated witnesses.
- 2000 (October) - Human Rights Act 1998 comes into force, enshrining the European Convention on Human Rights into domestic law.
- 2000 (December) - Attorney General issues directions on the acceptance of guilty pleas in courts, having regard to the position of victims.
- 2000 - First Witness Satisfaction Survey carried out.
- 2000 - Home Office Occasional Paper on *Victim and Witness Intimidation: Findings from the British Crime Survey.*
- 2000 - Victim Support publishes report on the impact of burglary victimisation.
- 2000 - Publication of the Scottish Strategy for Victims.
- 2000 - Home Office issues revised circular (19/00) on domestic violence to all police forces impressing on them the need to form coherent strategies when dealing with these kinds of cases.
- 2000 - The mandate of the National Probation Service to visit victims of serous crimes to discuss the release of life-sentenced is placed on statutory footing in the Criminal Justice and Court Services Act 2000.
- 2000 - First Vulnerable and Intimidated Witnesses Survey carried out.

2001

- 2001 (February) - Launch of a consultation process to update the Victim's Charter of 1996.
- 2001 (April) - Extended Probation Service scheme for contacting victims of serious violence or sexual crimes begins.
- 2001 (April) - Start of the evaluation period for the Crown Prosecution Service's new responsibility of communicating decisions (including witness warning and de-warning) directly to victims.
- 2001 (April) - CPS issues *Statement on the Treatment of Victims and Witnesses.*
- 2001 (June) - Responses published to the Victim's Charter consultation documented.
- 2001 (October) - Victim Personal Statement Scheme goes national.
- 2001 (October) - Lord Chancellor's Department issues practice directive on the use of victim personal statements.
- 2001 (November) - CPS published a leaflet in aimed at victims of domestic violence.
- 2001 - Results from the Vulnerable and Intimidated Witnesses Survey of 2000/01 published.

- 2001 - Home Office issues a leaflet for victims of sexual or violent crime on the release of offenders and the obligations of the Probation Service.
- 2001 - EU council Framework Decision on the standing of victims in criminal procedure.
- 2001 - Home Office grant to Victim Support increased to £22.7 million to allow the charity to extend its Witness Service to all magistrates' courts.
- 2001 - Updated guidance on interviewing children and other vulnerable and intimidated witnesses issued to replace the 1992 *Memorandum of Good Practice.*
- 2001 - Guidance issued by the Home office and Lord Chancellor's Department on the provision of therapy to child witnesses before a trial.
- 2001 - Publication of Home Office booklet *Information for Victims of Sexual or other Violent Offences* to inform victims about the Probation Service's contact work and what they can expect the service to do for them under the Victims Charter and Criminal Justice and Court Services Act of 2000.
- 2001 - Victim Support's 2001 manifesto calls for more work to be done to assist victims facing various difficulties *outside* the criminal justice system.
- 2001 - *R* v. *A* (W.L.R. 2001(1):789) suggested that s.41 of the Youth Justice and Criminal Evidence Act (limiting the cross examination of rape complainants on sexual history) is restricting the admissibility of pertinent evidence.
- 2001 - CPS publishes a number of public information documents; including a leaflet for witnesses to prepare them for their meeting with the CPS when they arrived at court.
- 2001 - Publication of Lord Auld's review of the purpose, structure and working of the criminal courts in the criminal justice system.
- 2001 - European Commission Green Paper on Compensation to Crime Victims.

2002

- 2002 (February) - Victim Support published *Criminal Neglect: No Justice Beyond Criminal Justice* on the needs of victims outside the criminal justice system.
- 2002 (June) - The criminal justice system's Annual Report foreshadows the imminent publication of a new White Paper.
- 2002 (July) - *Justice for All* White Paper.
- 2002 (November) - Report on the *Justice for All* pilot schemes to experiment with extended court opening times in the evenings and on Saturdays.
- 2002 - Victim Support publishes report on the implementation of the EU council framework decision.
- 2002 - Second Witness Satisfaction Survey carried out.
- 2002 - Victim Support publishes a study on support to be afforded to the secondary victims and witnesses of the Harold Shipman murders.
- 2002 - Victim Support announces it was established a Witness Service in all magistrates' courts.
- 2002 - Lord Chancellor's Department issues the *Judges and Schools* leaflet.

- 2002 - Lord Chancellor's Department's report on the piloted use of the computerised 'Xhibit' system to allow witnesses to follow the progress of a case on a screen outside the courtroom.
- 2002 - Criminal Justice Bill 2002.
- 2002 - Courts Bill 2002.
- 2002 - European Union launches a proposal for a council directive *on the short-term residence permit issues to victims of action to facilitate illegal immigration or trafficking in human beings with the competent authorities.*

2003

- 2003 (January) - Series of leaflets published by Victim Support providing advice for victims of burglary, victims of violent offences and for parents on helping children cope with the effects of crime.
- 2003 (March 3rd) - Non-statutory Victims' Advisory Panel meets for the first time.
- 2003 (April) The government organises the criminal justice system into 42 'Local Criminal Justice Boards'.
- 2003 (May) - Home Office *Victims of Crime* booklet updated.
- 2003 (May) - *No Witness No Justice* report from the Inter-Agency Working Group on Witnesses.
- 2003 (July) - Publication of *A New Deal for Victims and Witnesses: National strategy to deliver improved services.*
- 2003 (August) - Home Office *Witness in Court* booklet updated.
- 2003 (October) Consultation paper *Securing the attendance of witnesses in court* invites view on the proposed resurrection and modernisation of Witness Orders to require witness attendance at court.
- 2003 (December) - Domestic Violence, Crime and Victims Bill.
- 2003 (December) - First draft of the Code of Conduct is released fro consultation.
- 2003 - Second Venerable and Intimidated Witnesses Survey carried out.
- 2003 - Home Office publishes new leaflet to explain to witnesses the criminal justice procedure after they had given a statement.
- 2003 - *'Criminal Justice' section of the Home Office website renamed 'Justice and Victims'.*
- 2003 - Home Office publishes *Coping with Grief* leaflet for survivors of homicide.
- 2003 - 'Virtual Walkthroughs' for both victims and witnesses appeared on the cjsonline website.
- 2003 - Report published on the Scottish experience of implementing the Witness Service in its Sheriff.
- Home Office issues circular 58/03 on the implementation of the *Speaking up for Justice* report and the Youth Justice and Criminal Evidence Act to most criminal justice agencies.

- 2003 - Scottish Executive publishes updated guidance on interviewing child witnesses.
- 2003 - 'No Witness No Justice' schemes (especially Witness Care Units) piloted in 5 areas around the UK.
- 2003 - Launch of the Criminal Case Management Framework (ETMP).
- 2003 - Home Office publishes *Tackling Witness Intimidation – An Outline Strategy.*
- 2003 - Publication of results from the second Witness Satisfaction Survey.
- 2003 - Home Office issues guidance on the multi-agency task of witness warning to CJS agencies.
- 2003 - Pilots of registered intermediaries special measure to assist witnesses with communication difficulties.
- 2003 - Sexual Offences Act 2003 widens the legal definition of sexual victimisation.
- 2003 - Criminal Justice Act 2003.
- 2003 - Sentencing Guidelines Council established.
- 2003 - Courts Act 2003.

2004

- 2004 (February) - The Office for Criminal Justice Reform issues 7 'Toolkits' covering 7 'Victims and Witnesses' priorities.
- 2004 (April) - Home Office sponsors the first National Victims Conference; *Supporting Victims: making it happen.*
- 2004 (November 15th) - Domestic Violence, Crime and Victims Act 2004 receives royal assent.
- 2004 – Victims' Advisory Panel publishes its report on the first year of operation.
- 2004 - Government launches consultation on victim compensation suggesting employers and industry foot the bill.
- 2004 - Department for Constitutional Affairs (the Lord Chancellor's Department as was) publishes strategic plan for the next five years. *Cutting Crime, Delivering Justice.*

2005

- 2005 (March) Final version of Victim's Code of Practice published as part of a consultation exercise in March 2005.
- 2005 (March) - Magistrates' Court Committees are replaced by the Local Criminal Justice Boards.
- 2005 (April 4th) - On Aril 4th The Criminal Procedure Rules come into force, for the first time giving the judiciary and magistracy explicit powers to manage the progression of criminal cases.

- 2005 (April) - Creation of a 'unified' system of court administration under Her Majesty's Courts Service.
- 2005 (July) - Second edition of the Criminal Case Management Framework published.
- 2005 (September 1st) - Victim's Code of Practice approved by parliament.
- 2005 (September) - Consultation on the introduction of victim advocates for relatives of homicide victims launched.
- 2005 (October) - Launch of more specialist domestic violence courts projects.
- 2005 (October) - Attorney General launches the *Prosecutors Pledge.*
- 2005 - Labour's 2005 manifesto introducing specialist victim advocates first appeared.
- 2005 - The Trials Innovation Branch of the DCA sends letters to all the Justices' Chief Executives of the outgoing Magistrates' Court Committees and the newly appointed Area Directors of Her Majesty's Courts Service to tell them about the Domestic Violence Courts pilots and invite them to implement their own scheme.
- 2005 - Appointment of Fiona Mactaggart as Home Office victims minister.
- CPS publishes a consultation document on a 'Children's Charter'.
- Publication of a draft 'Witness Charter' to compliment the Victim's Code of Practice.
- Government launches a fresh consultation on reforming the criminal injuries compensation scheme, having failed to receive support for its previous reform proposals in 2003.

2006

- 2006 (January 1st) Launch of the recruitment campaigns to appoint the first Commissioner for Victims and Witnesses and for witness intermediaries.
- 2006 (February) - Responses to the government's consultation on the introduction of 'victims advocates' published. Government announces pilots of the scheme at the Old Bailey and at the Crown Courts in Birmingham, Cardiff, Manchester (Crown Square) and Winchester.
- 2006 (April 3rd) Victim's Code of Practice comes into force.
- 2006 (July) - Criminal Justice Review published.
- 2006 (July) - The government publishes responses from the Witness Charter consultation.
- 2006 (August 3rd) - The government announces a £1 million grant to allow Victim Support to pilot 'new and enhanced witness services' in North Yorkshire, Nottingham and Salford (Greater Manchester).
- 2006 (October 4th) - New Victims' Advisory Panel formed.
- Consultation paper published on the victims of human trafficking.

- A new consultation document is published on the law in relation to rape and serious sexual assault, entitled *Convicting Rapists and Protecting Victims – Justice for victims of rape.*

2007

- 2007 (April) - Proposed introduction date for new Witness Charter by the proposed April 2007.

APPENDIX 4: OUTSTANDING DATA

Below I have collated two tables to illustrate the full list of reasons why trials ran late and failed to run (as effective) at all three courts.

Table 51: Reasons why proceedings started late and percentage of trials starting late for each reason at Courts A, B and C*, **

	% of Court A trials	% of Court B trials	% of Court C trials	% of Courts A and B trials	% of all trials (Courts A, B and C
Trying to get a civilian witness to court and/or persuading to give evidence, or debating what to do about absence (summons, warrant etc)	38	30	11	29	28
Another case dealt with first	24	22	16	23	23
Negotiations on plea bargain	15	17	21	16	17
Resolving listing issues	24	22	5	23	21
Trying to get a defendant to court	12	14	11	13	13
General legal argument	5	4	21	5	6
General sorting out of the evidence	5	3	21	4	6
Bad character application under the Criminal Justice Act 2003	0	2	16	1	2
Prosecution advocate needed to speak to prosecution witnesses	13	4	0	9	8
Defence advocate trying to convince defendant to plead guilty (with no bargain)	4	2	11	3	4
Discussions over a possible bind over	6	9	0	7	6
Lawyer(s) need to hear a tape or watch a video before starting	9	5	0	7	6
Late special measures application	1	0	11	<1	1
The magistrates/judge are late coming in, or there is a problem finding a magistrates/judge to take the case	2	4	5	3	3
Debate over bad character application under the Criminal Justice Act 2003	2	1	5	1	2
Special measures or TV/video equipment not working	5	3	0	4	4
Prosecutor arrives late	1	0	5	<1	1
The defence advocate needs to speak to the defendant	4	1	0	3	2
Bench needs time to read papers	0	0	5	0	<1
There is a need to take a new statements from the victim	0	0	5	0	<1
Trying to get a police witness to court	1	3	0	2	2

General debate about how to deal with an unusual situation	2	2	0	2	2
Time taken to get an interpreter to court	2	2	0	2	2
A videotape has not been delivered on time	2	1	0	1	1
Prison bus delivers the defendant late	2	1	0	1	1
Prosecutor needs time to read file as has only been given this case this morning	2	1	0	1	1
An unexpected witness is brought to court by the defendant, defence solicitor needs time to interview him and take a statement	2	1	0	1	1
Agent prosecutor searching for a CPS prosecutor to ask if he/she can drop the case	2	1	0	1	1
Trying to agree on facts in a Newton hearing	1	1	0	1	1
Extra witness needed who has not been called, time taken trying to get him/her here	1	1	0	1	1
A cassette of a videotaped interview has not been delivered on time	0	2	0	1	1
Defendant has been charged with the wrong offence, prosecutor needs time to amend file	1	1	0	1	1
Agent prosecutor needs to take general instructions from the CPS	2	0	0	1	1
The court does not have the facilities to play an SVHS video, discussion about what to do	2	0	0	1	1
Defence solicitor needs some information from the prosecutor which has been requested but not disclosed yet by the CPS. Takes time to get the information	1	1	0	1	1
A new defence witness was not tendered to the defence till yesterday. Defence solicitor needs time to interview him/her	1	1	0	1	1
Waiting for prosecution witness to finish breast feeding baby	1	0	0	<1	<1
A witness has childcare issues	1	0	0	<1	<1
Coming to a deal that is not a plea bargain involving other civil proceedings	1	0	0	<1	<1
One of the lawyers went to the wrong court (in another town)	1	0	0	<1	<1
Legal adviser wanted to check authorities	0	1	0	<1	<1
Debate about need for special measures / more special measures	0	1	0	<1	<1
Time needed to prepare some documents	0	1	0	<1	<1
The court is sent the wrong video to play	0	1	0	<1	<1
Waiting for some exhibits to arrive	0	1	0	<1	<1

The defendant has been sent to the wrong court building (in another town) by the Youth Offending Team	1	0	0	<1	<1
Having finished another case late in the morning, the magistrates come in late in the afternoon	0	1	0	<1	<1
A prosecution witness is not delivered from custody on time	0	1	0	<1	<1
Court needs to be organised to accommodate lots of young defendants and their parents	1	0	0	<1	<1
Waiting for a printout of the defendant's criminal record	1	0	0	<1	<1
Some documents are tendered to the defence solicitor this morning and he/she needs time to read them	1	0	0	<1	<1
Took time to get an 'appropriate adult' to court for a young defendant	0	1	0	<1	<1
A fire drill	0	1	0	<1	<1
Took time to find a room for the prosecutor to speak to the prosecution witnesses	1	0	0	<1	<1
Time taken to set up hearing aid loop system	0	1	0	<1	<1
Time taken to set up special measures	0	1	0	<1	<1
Portable screens brought in and positioned	1	0	0	<1	<1
Defence solicitor has to try and get another defence solicitor to take the case	1	0	0	<1	<1
Defence solicitor not happy with the wording of the charge and the agent prosecutor phones the CPS to take instructions on changing it	1	0	0	<1	<1
Defendant gave some new photo evidence to this/her solicitor yesterday and the defence solicitor shows it to the prosecutor	1	0	0	<1	<1
Legal Adviser leaves court and then cannot be found	0	1	0	<1	<1
Don't know / no specific reason	4	12	11	8	8
Trial starts on time	1	1	0	1	1

***More than one reason for lateness allowed for each trial.**

****Reasons arranged in order of decreasing total percentage across all three courts.**

Table 52: Reasons why proceedings cracked or were ineffective and percentage of trials cracked/ineffective for each reason at Courts A, B and C*, **

	% of Court A trials	% of Court B trials	% of Court C trials	% of Court A and B trials	% of all trials (Courts A, B and C
Guilty plea following plea bargain	12	15	16	13	13
Witness does not come due to reluctance, or arrives but doesn't want to give evidence	17	16	0	16	15
Guilty plea (without plea bargain)	8	7	11	7	8
Bind over	3	9	0	6	5
Following delays there is now no time to have the trial	2	1	5	1	2
Another case is deemed to take precedence	1	5	0	3	3
The defence want a psychiatric report on the defendant to see if a defence of diminished responsibility could be available, but there is no time to get one	0	0	5	<1	<1
Witness does not attend because he/she is ill	3	1	0	2	2
Prosecution disclosed evidence to the defence very late and the defence solicitor has no time to prepare	2	1	0	1	1
The defendant cannot get to court because of transport difficulties	1	2	0	1	1
A witness is now needed who has not been called	0	3	0	1	1
Police witness not present	1	1	0	1	1
Based on new information that arose on the day of the trial (not just witnesses not attending) the prosecutor offers no evidence	2	0	0	1	1
Witness arrives at pre-planned time but couldn't come back when the trial is postponed for later in the day	2	0	0	1	1
The prosecutor knows a defence witness and there is no other prosecutor to take his place	1	1	0	1	1
Witness not here, unknown reason	1	1	0	1	1
Prosecutor tenders a witness very late to the defence and the defence solicitor has no time to prepare	2	0	0	1	1
The defence want a psychiatric report on the defendant because he may not be capable of answering questions, there is no time to get one	1	0	0	<1	<1
One of the witnesses knows one of the magistrates and another magistrate cannot be found	0	1	0	<1	<1
The defendant has committed suicide	1	0	0	<1	<1
There are only two magistrates available and the Chair is unwilling to go ahead	1	0	0	<1	<1

The case is given to the prosecutor that morning and he/she refuses to take it	1	0	0	<1	<1
An interpreter is needed and none are available	0	1	0	<1	<1
The magistrates are unable to stay until the afternoon and the trial won't be finished in time	0	1	0	<1	<1
The defence solicitor who was going to take the case (and has the file) is ill	1	0	0	<1	<1
Facts agreed on day in Newton hearing	0	1	0	<1	<1
The defence solicitor needs evidence the prosecution should have disclosed, but has not	1	0	0	<1	<1
Case dropped following a deal that is not a plea bargain but involves dropping civil charges	1	0	0	<1	<1
The prosecutor cannot proceed because he used to be the defendant's solicitor	0	1	0	<1	<1
Some of the prosecution witnesses were at the legal adviser's wedding and met all the other legal advisers in the building, so none can take the case	0	1	0	<1	<1
Don't know	2	0	0	1	1
Trial was effective	45	43	63	44	45

***More than one reason for failure to run allowed for each trial.**

****Reasons arranged in order of decreasing total percentage across all three courts.**