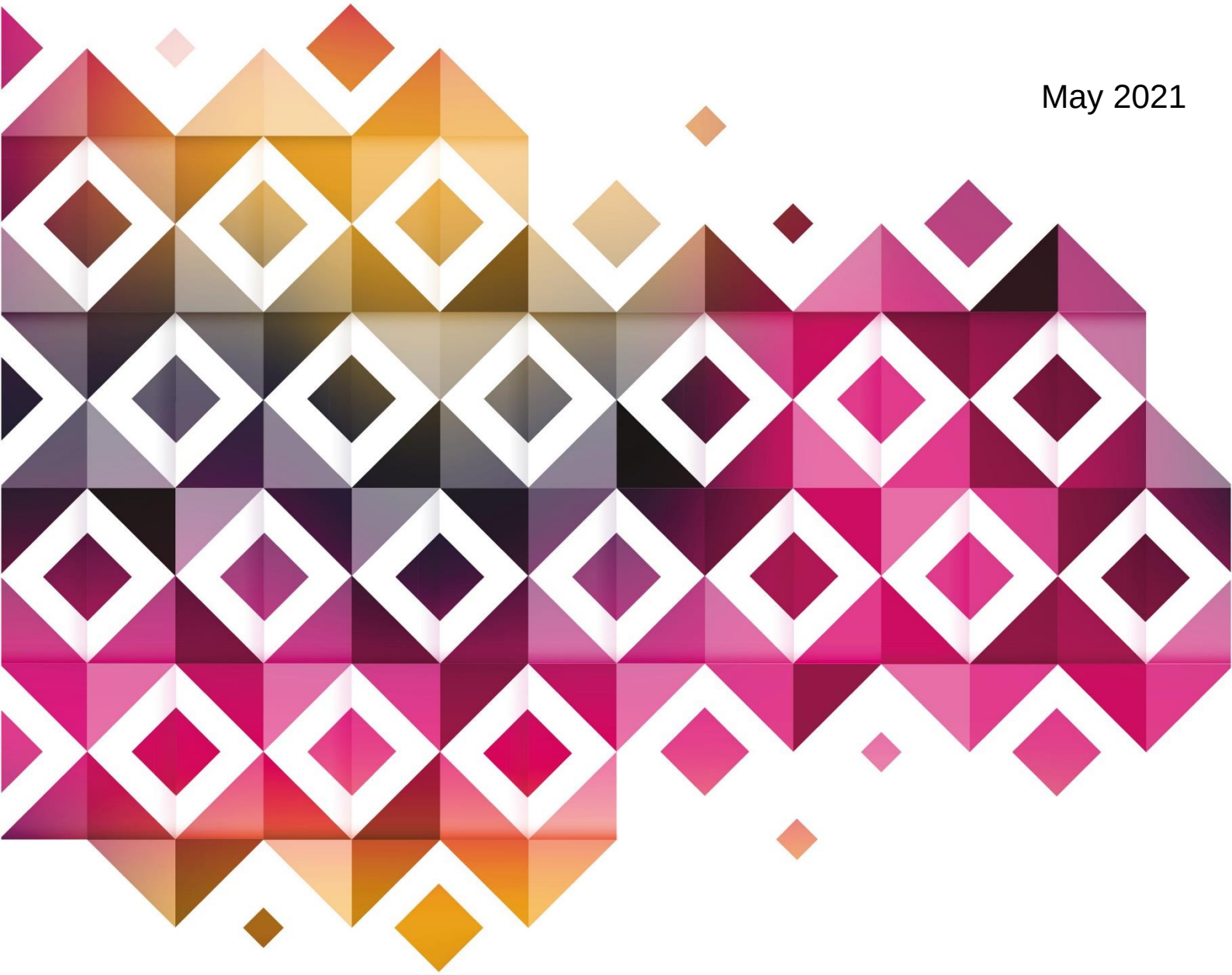
Next steps for special measures

A review of the provision of special measures to vulnerable and intimidated witnesses

May 2021



Victims Commissioner

Victims' Commissioner's introduction

Everyone we spoke to in the criminal justice system for this review praised the role played by 'special measures.' They are arrangements which help witnesses to give their best evidence despite being vulnerable or intimidated. They include such things as giving evidence from behind a screen rather than in the public glare of the witness box or testifying from a small room somewhere outside the court across a live television link. Many people who would not have been able to give their evidence have been enabled to do so because of these brilliant but simple devices. Many more witnesses have been saved unnecessary stress. And the courts have functioned more effectively as a consequence.

Given how valued they are, the surprise was that there is an over-complicated system for assessing witness' needs and supplying these measures of support. Witnesses are not always being assessed as needing help when professionals further down the line see that they do. Some are not getting the measures that would help them best. Some measures are under-used, some favoured over others by local 'court cultures' making it a postcode lottery whether witnesses get the choice to which they are entitled.

The recent Domestic Abuse Act will extend automatic entitlement for special measures to all domestic abuse witnesses, multiplying up those will be entitled to use them. So, it is a key time to allocate overall responsibility for needs assessing *all* witnesses and for conferring with them on precisely what measures will serve them and the interests of justice best. We found that throughout the path of contact from first police report until the end of trial, all agencies take some of this responsibility. This is welcome, but the best expertise and the best single-minded focus comes from police Witness Care Units. They need to have overall responsibility and to co-ordinate the other agencies' input so that there is a systematic, skilled and focussed process which guarantees that every witness is able to give their best evidence.

The magistrates' court seems to be behind in the use of special measures and given that much domestic abuse is dealt with there, we found it urgent to upgrade facilities and boost the Witness Care Unit resources to ensure parity of witness care with the Crown Court. The new and obviously essential statutory provisions for domestic abuse victims need to be brought into force this year.

By the time someone arrives at court it may be too late even if special measures are available. Their fears may already have been realised because they have been approached on the way to court or in the entrance hall or the canteen by the defendant or her/his supporter. We have heard from criminal justice professionals in this research and hear from victim support services day by day that witnesses are afraid of being so approached and it can deter them from attending at all and/or undermine the confidence of their testimony. This is an area which needs urgent attention, which it is not getting. The new Victims' Code favours separate entrances and separate waiting areas for the prosecution and the defence and our research showed us how imperative this is.

One means of optimising victim confidence and maximising their protection is to allow them to give them their evidence remotely from specific evidence centres located away from the courts. There are over forty of these evidence centres available, but they are greatly underused. They must be offered as a standard choice with a proper explanation of how they

as facilities can offer ease of testimony with personal security. They must continue to be a choice, but they have obvious potential and they should be promoted.

One special measure (provided by Section 28 of the Youth Justice and Criminal Evidence Act 1999 but never fully utilised) has been rolled out nationally during the pandemic for vulnerable witnesses. This allows the witness to record their first account of what happened to them with the police in what is now a well-used process called an Achieving Best Evidence video. In s28 proceedings, that evidence is served on the defence and as soon as they can fairly be prepared to cross examine, and that happens with the lawyers and judge in court alone and the witness at the end of a television link. Cross-examination happens when the witness' memory is fresh and is itself videoed, so the two videos become the witness' evidence. They are free to leave the trial and have no further role: whenever the case is heard the two videos will be played, they will not attend and they are free to get on with their lives and to take therapy if they need and wish to with no concerns about whether it might impact their evidence or perhaps be disclosed to the defence.

This has been shown to be an excellent way to treat vulnerable witnesses: in a preliminary evaluation, most practitioners involved in this process felt that witnesses' trauma was reduced. Monitoring data suggested witnesses who accessed s28 had shorter cross examinations compared with those who only had their evidence in chief pre-recorded and then waited for the trial to commence. The guilty plea rate prior to trial was notably higher in s28 cases. And there was little difference in the rate of conviction between the two groups of cases. To this, we can add that almost all the Crown Court judges in our survey who had experience of s28 rated it as effective in reducing witness trauma, and most said it was effective in achieving best evidence.

Without witnesses there will be few trials. In an era when a large proportion of cases concern intimate and hidden harms such as sexual and domestic abuse and modern slavery, more and more witnesses will be intimidated by the fear of giving evidence on such sensitive and intimate experiences. On special measures, much has been achieved but much has yet to be done. I hope this report and its recommendations help set an agenda for the next phase of special measures - one which makes navigating the court experience easier for more and more witnesses.

Dame Vera Baird QC
Victims' Commissioner – England and Wales

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Thank you to the interviewees from police forces, Witness Care Units and Citizens Advice Witness Service, as well as HMCPSI, Rape Crisis England and Wales, the Judicial Office and Magistrates Association for taking part in research interviews, providing evidence, and supporting the surveys cited this report.

Thank you to the magistrates, judges and Witness Service staff and volunteers who took part in our surveys.

The Victims' Commissioner is grateful to advice and suggestions from the OVC Reviews & Analysis Advisory Group, Victims' Commissioner Advisory Group, and to Dr Olivia Smith and Dr Jacki Tapley for peer reviewing this report.

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Executive Summary

Special measures are intended to help vulnerable and intimidated witnesses give their best evidence to the court. They were first introduced in the Youth Justice and Criminal Evidence Act 1999 and brought into effect over a period of years.

This review explores the current provision of special measures, from the initial assessment of a witness' need to trial. It aims to answer these questions:

- How are victims and witnesses' needs assessed for special measures?
- Is need going unmet and why?
- How might needs assessment be improved?
- How effective are special measures and are there barriers to their effectiveness?
- Are some measures under-used?
- What is the picture of provision under Covid?
- What is the wider experience of victims and witnesses in court?
- What data are needed to improve provision and delivery?

The review mixed quantitative research techniques (survey and analysis of data) with qualitative methods (semi-structured interviews). To get a good overview of this area, we carried out in-depth interviews with a group we refer to as our experts – those involved in policy and practice concerning vulnerable and intimidated witnesses at a national level, across agencies like the police and Crown Prosecution Service, and academics who have worked in this area.

We also carried out three surveys: with Crown Court judges; magistrates and district judges; and Citizens Advice Witness Service. We also conducted interviews with some of those responsible for identifying need and delivering special measures in four police force areas.

Barriers to special measures: assessment of need, eligibility and access

There is no set process of needs assessment for special measures and no single agency has overarching responsibility for identifying a requirement for special measures and ensuring the right ones are put in place. Rather, the process begins with the responding police officer and spans Crown Prosecution Service (CPS), police Witness Care Units, the court-based Citizens Advice Witness Service and the courts themselves.

So, there are multiple opportunities to spot need, but a risk of to-ing and fro-ing of information, and scope for information to be lost or duplicated across agencies.

Police officers fill in MG2 forms specifying automatic eligibility for those classified as vulnerable or intimidated. One national expert noted, *'I don't see a lot of needs assessments'*. More detailed needs assessment should occur later on, but not all the police Witness Care Units we spoke to had a clear-cut process or set of questions for this.

An inspection by HM Inspectorate of Constabulary of police and CPS case files in 2015 found that in a substantial minority of cases from a national sample (23%) the officer had not recorded whether the witness had particular needs that would require support should they need to give evidence. In most of those files where there should have been an assessment for special measures, either none was done, or it was inadequate.

In line with this, our surveys also suggested that needs assessments may be lacking: 53% of responding magistrates and district judges felt that vulnerable victims and witnesses were only

having their needs accurately assessed sometimes or less often. Just 10% felt this was happening always or almost always.

We found that automatic eligibility can sometimes be a barrier to the careful assessment of *specific* witness needs: 39% of Crown Court judges responding to our survey had come across cases in which they felt the automatic eligibility of sex offence complainants to special measures (as intimidated witnesses) meant that specific vulnerabilities had been missed.

We asked our interviewees about *whose* needs were being missed. Most commonly, they said those with mental health difficulties, which witnesses might be reluctant to divulge.

An important step forward has been HM Courts and Tribunal Service's (HMCTS) rapid rollout of Section 28 across all Crown Courts. This allows vulnerable witnesses not only to have their evidence in chief but also their cross examination pre-recorded. This short-circuits the wait to attend court to testify with all the stress that entails, particularly relevant at the present time when there is a large backlog of cases and witnesses are waiting a long time. We strongly recommend that s28 be made more widely available as quickly as possible.

Covid has precipitated much greater use of live links and audio and visual technology during trials. It is noteworthy that, notwithstanding some glitches around quality of audio-visual, 86% of Witness Service staff felt that overall the use of video links had a positive effect on witnesses' experiences of giving evidence and 94% felt that using video link made courts more accessible to witnesses. This is an important vote of confidence for the increased use of audio-visual technologies in courts, supporting our recommendation to expand s28.

Recommendation: HMCTS introduces s28 for intimidated as well as vulnerable witnesses across Crown Courts as soon as practically possibly. In due course, consideration should be given to offering it more widely, especially when trial dates are a long time in the future.

Our report makes several further recommendations about ways to improve needs assessments for special measures. These are designed to improve the coordination of special measures needs assessments and applications across criminal justice agencies.

Recommendation: The police and CPS should work together to streamline the process of assessing need and applying for special measures, focussing response officers on assessing immediate safeguarding and support needs and putting the responsibility for special measures with Witness Care Units.

Recommendation*:* Police Witness Care Units should have overarching responsibility for special measures needs assessments. They should be resourced to speak to all witnesses and armed with a thorough and standardised needs assessment process.

Improving the provision of special measures

Special measures are a success story of the criminal justice system. Our interviewees universally agreed that they are a good thing, and nearly three quarters (70%) of Crown Court judges in our survey felt that the provision of special measures to vulnerable and intimidated witnesses had improved during their time in the role.

However we found that some special measures are used far more often than others: physical screens (which prevent the defendant seeing the witness in court), live links and pre-recorded evidence in chief were most often used in the Crown Court, use of evidence in private hardly at all.

Our surveys showed the magistrates' court lagging behind the Crown Court, with special measures less likely to be granted and provision poorer. The CPS considers Ground Rules Hearings to be essential for witnesses with communication difficulties where a Registered Intermediary has been engaged. They provide an opportunity to discuss and establish how a vulnerable witness will be supported. However, our surveys found that magistrates and district judges saw Ground Rules Hearings used far less often than judges in the Crown Court.

Certain factors also were perceived to reduce the effectiveness of special measures. For example, the quality of audio-visual recording and playback were felt to reduce the effectiveness of using a live link. Only 26% of Witness Service respondents said the quality of audio-visual links was good in all cases they saw and 53% said it was good in most cases.

There were also concerns that witnesses were not being given an opportunity to read their statement or speak to the prosecution barrister in advance of giving evidence when they were doing so off-site (e.g. from another court building, or from a remote evidence centre as was happening more frequently under Covid arrangements).

Only around a quarter of judges felt that pre-recorded Achieving Best Evidence (ABE) interviews were highly effective in achieving best evidence: this was attributed to poor quality interviewing and problems with technology. We also heard from multiple sources that some barristers and judges felt that evidence over video lacked the impact of appearing in person. To the best of our knowledge there is no empirical evidence to support this and so it should not be communicated to witnesses who may be deterred from giving evidence this way.

Both survey and interview evidence from the Witness Service made clear how important it is that witnesses understand what special measures will be used well in advance of the hearing and have the chance to practise them. This pre-trial support can be organised, but referrals are currently low. The Witness Service felt strongly that this is an opportunity missed, which may inhibit witnesses from making the right choice of special measures, feeling comfortable with them or using them successfully.

We make the following recommendations to address barriers to the effective use of special measures:

Recommendation: The magistrates' court needs parity with the Crown Court, through equal provision of facilities and equipment to guarantee the availability of tailored support for vulnerable and intimidated witnesses. Needs assessments need to be rigorous, in spite of the challenges of assessing need and delivering special measures in the fast-paced environment of the magistrates' court.

Recommendation*:* Ground Rules Hearings should be mandatory in every case involving vulnerable or intimidated witnesses as a final assurance that needs assessments have been adequate and special measures are provided. HMCTS should monitor the occurrence of Ground Rules Hearings across both the higher and lower court.

Recommendation*:* The CPS must guarantee that a witness can speak – either in person or via live link – to the prosecuting barrister and can re-read their statement before giving evidence, irrespective of where they give evidence from.

Recommendation: Judges, magistrates, police and prosecutors should receive training on the empirical evidence of the effects of special measures on quality of evidence. Police and prosecutors should be trained not to prejudice witness choice of special measures.

Recommendation: There is a need for more referrals and for referrals to be made earlier to the Witness Service. A pilot inter-agency exercise could identify strategies for improvement which could be disseminated nationally.

Recommendation: HMCTS and the Witness Service should agree a national protocol to ensure that vulnerable witnesses (including children) are enabled to access practice sessions with their special measure of choice.

Special measures during Covid

The fieldwork for this research took place during the Covid pandemic. It is concerning that in November, less than half of judges and magistrates in our surveys felt that the needs of vulnerable and intimidated witnesses were being completely met under trials taking place under Covid arrangements. At that time, provision of screens was identified as being problematic in the Crown Court.

Our survey with the Witness Service identified that communication with witnesses appeared to have suffered under Covid: only 15% strongly agreed that witnesses understand exactly what special measures will be in place in advance of coming to court, with 43% tending to agree and nearly a third (30%) tending to disagree.

Our surveys and discussions highlighted that victims are often distressed and put-off giving evidence by video link when they realise their video image will be visible to the defendant and public gallery in court. This problem is ongoing, but has come to the fore in during Covid, when the use of live links has increased.

Recommendation: Screening the live link video screen from the defendant should be expressly offered to every vulnerable/intimidated witness and consideration given in every such case to any argument to screen it from the public gallery too.

Victims and witnesses' wider experience of court

Our discussions with staff in the four areas brought to the fore that for witnesses, special measures are only part of the wider process of coming to court to give evidence, and how daunting and difficult this can be.

One issue was a lack of consideration of witnesses in relation to listings (the scheduling of court hearings). In one Witness Care Unit interviewee's words:

There's no concept of where they're travelling from, whether they're vulnerable, whether they're desperate to give their evidence in order to get it out of the way on with their lives - it's all to do with does this fit into our listings, is the defendant represented. And that's so wrong.

Another issue was court culture. In some areas, it seemed that Resident Judges were more attuned to witnesses needs than others. For example, some allowed witnesses to use a judge/staff entrance to the court building to avoid the defendant and their supporters, while others did not.

We would like to see greater consideration given to witnesses around their whole experience of coming to court, prompting the following recommendations:

Recommendation: HMCTS should set out a protocol re-iterating the importance of witness needs in listings and including a mechanism for input on the victims' perspective on potential changes to listings. It should include the requirement that trials including vulnerable and intimidated witnesses are not 'double listed' (scheduled as a backup for another case in the same court).

Recommendation: HMCTS must ensure that a separate entrance to the court building is available to all vulnerable or intimidated witnesses. If the only alternative entrance is the judicial or staff one, it must gain any agreement necessary from the judiciary. The alternative entrance must be suitable for disabled witnesses to use.

Data gaps

There are significant gaps in national data collection: monitoring and understanding of the 'demand and supply' of special measures, what proportion of vulnerable and intimidated witnesses are eligible for special measures, offered them, receive them, and which they receive. As one expert told us:

If the country was to make a policy that was to say that every child 11 years and under gets an intermediary, one of the things that the country would struggle with right away is the country can't tell you what that demand looks like. The justice system doesn't know how many 11-year olds and under are witnesses or victims of crime and of those how many subsequently go to court.

This data is necessary to improve witness engagement with the criminal justice system, and to identify and assess disparities between different groups of victims and witnesses.

While we found examples of good and improving local practice, there is a need for further national coordination. Our last three recommendations all focus on better data:

Recommendation: The Ministry of Justice and Home Office should develop a national protocol for data collection on special measures, in conjunction with APCCs, NPCC, CPS, HMCTS, and other agencies. This protocol should to include the recording of data on victim vulnerability and intimidation, witness choice over special measures, applications for and granting of specific measures, and protected characteristics.

Recommendation: The Ministry of Justice and the Home Office should jointly lead on producing an annual statistical bulletin on special measures provision to include police, CPS and courts data.

Recommendation: The National Criminal Justice Board should coordinate a data collection and monitoring improvement programme with Local Criminal Justice Boards. This should focus on monitoring victims' experience of special measures provision using management information and victim feedback; disseminating good practice; and learning from monitoring special measures provision.

1. Introduction

1.1 Special measures explained

Giving evidence in court is a daunting experience for many, all the more so where a witness is vulnerable and/or intimidated. Special measures are a range of provisions designed to help vulnerable[1] and intimidated witnesses give the best evidence they can to the court and mitigate some of the associated stress.

The legislation underpinning special measures is the Youth Justice and Criminal Evidence Act 1999 (YJCEA)[2] which introduced the following measures to those defence or prosecution witnesses[3] who are eligible as vulnerable or intimidated:

Screens	Measures to shield the witness from the defendant and the public, so neither can see the other. Generally, these are portable or permanent curtains around the witness box in court.
Live link	A live video link which allows the witness to give evidence from outside the courtroom, either from another room in the court building or suitable location elsewhere. The witness cannot see the defendant, or their supporters, but they are visible to all in the court room on screen.
Evidence given in private	Members of the press and public can be excluded from the court (except for one person representing the press) in cases involving sexual offences or intimidation by someone other than the accused.
Removal of wigs and gowns	By barristers and judges in the Crown Court.
Visual recorded interview	An interview pre-recorded before the trial can be accepted by the court as the witness' evidence in chief.[4] This is often called the Achieving Best Evidence (ABE) interview. There is a legal presumption that all child (under 18) witnesses will give evidence in this way, unless they choose to opt out of this arrangement and the court accepts this. ABE interviews are automatically admissible for victims of sexual offences being tried in the Crown Court, with some provisos.[5]
Pre-trial visual recorded cross examination and re-examination	Also known as Section 28 (s28),[6] this is a pre-recorded cross-examination or re-examination carried out across an audio-visual link of a vulnerable witness, admissible in the Crown Court; s28 has recently been made available across all Crown Courts and has been piloted for intimidated witnesses too.
Examination of a witness through an intermediary	A communication expert (intermediary) may be appointed by the court to assist a vulnerable witness in giving evidence. They may also be used at the investigation stage.
Aids to communication	Vulnerable witnesses may be assisted to give evidence through measures like computers, voice synthesisers and books.

[1] We acknowledge the debate about the appropriateness of using the term vulnerability when discussing vulnerabilities. However, the report uses the terms vulnerability or 'vulnerable' victims, as they are commonly used in legislation and the Victims' Code.
[2] See Youth Justice and Criminal Evidence Act 1999, Chapter I Special measures directions in case of vulnerable and intimidated witnesses: https://www.legislation.gov.uk/ukpga/1999/23/part/II/chapter/I
[3] The defendant is not eligible for special measures.
[4] This is the evidence given by a witness in response to the initial questioning by the party which called that witness to testify – so here we are usually talking about the prosecution's questioning of the prosecution witness.
[5] Section 101, Coroners and Justice Act 2009 inserted a new section 22A into the YJCEA making this special provision for adult complainants in sex offence cases in the Crown Court. On application, the ABE interview is automatically admissible as evidence in chief unless this would not be in the interests of justice or the ABE would not maximise the quality of the witness' evidence.
[6] S28 of the YJCEA.

A couple of these measures require a little further explanation. Registered Intermediaries (RIs) are communication specialists provided to children and vulnerable victims under the special measures legislation. They are provided to forces by a national Witness Intermediary Service, run by the National Crime Agency. Registered Intermediaries assist vulnerable victims and witnesses in giving evidence in the initial Achieving Best Evidence (ABE) interview with the police; they attend ground rules hearings (GRHs) at court which discuss how witnesses can be questioned to enable them to give their best evidence;[7] and can accompany the vulnerable witness during questioning, to monitor their understanding and ensure their answers are understood. While Registered Intermediaries can provide communication support to defence witnesses, such appointments are rare. There is currently no government provision of communication support for defendants, though some defendants receive support for their communication needs through private companies or from intermediaries working outside the Witness Intermediary Service.

Witnesses giving evidence via a live link most commonly do so from another room in the court building, but they can also do this from a remote evidence centre (REC) away from the courts. This avoids having to travel to court with attendant risks of encountering the defendant or their supporters. RECs are a special measure, but they can be used by expert and defence witnesses in the interests of the efficient or effective administration of justice.[8]

1.2 'Vulnerable' and 'intimidated' defined

Vulnerable witnesses are defined by the legislation as all children under the age of 18 and any witness whose quality of evidence is likely to be diminished because they have a mental or physical disorder or disability, including impairments to cognitive and/or social functioning.[9]

Intimidated witnesses are defined as those suffering from fear or distress in relation to testifying in the case. Complainants in sexual offence, modern slavery and domestic abuse cases[10] automatically fall into this category unless they wish to opt out, as do witnesses to certain offences involving guns or knives. Crown Prosecution Service guidance also states that victims of the most serious crimes, as set out in the Victims' Code, might also be regarded as intimidated.[11]

Some eligibility is therefore dependent on subjective judgement, some measures are only available to some groups (see table) and automatic entitlement is limited. The process of identifying the need and applying for special measures is covered in Section Two. However, a couple of things are worth noting at the outset:

- Firstly, the granting of special measures is not a 'given' for those eligible. The permission of the court is required, based on the judge or magistrate's opinion of whether any special measure is likely to improve the quality of their evidence.

[7] Ground Rules Hearings to discuss and establish how vulnerable witnesses will be enabled to give their best evidence are good practice in any case with a witness who is vulnerable or who has a communication need. In cases where an intermediary is engaged, the CPS states that Ground Rules Hearings are essential. See: https://www.cps.gov.uk/legal-guidance/special-measures

[8] Under s.51 Criminal Justice Act 2003.

[9] As defined in the Mental Health Act 2007 as any disorder or disability of the mind.

[10] Under the Part 5 of the Domestic Abuse Act 2021, domestic abuse victims will have intimidated status and are automatically entitled to special measures in criminal proceedings. See: https://www.legislation.gov.uk/ukpga/2021/17/part/5/enacted.

[11] This includes close relatives bereaved by criminal conduct, victims of domestic violence, hate crime, terrorism, sexual offences, human trafficking, attempted murder, kidnap and false imprisonment, arson with intent to endanger life and wounding or causing grievous bodily harm with intent. See: https://www.cps.gov.uk/legal-guidance/special-measures

- Secondly, under the Code of Practice for Victims of Crime in England and Wales (VCoP), all witnesses have the right to have their needs assessed by a police officer and the Witness Care Unit (a unit within the police force, see Section Two) to determine whether they are eligible and would benefit from special measures. Witnesses must also be asked for their views about which measure they would prefer.

1.3 This review

The Victims' Commissioner for England and Wales' review of Special Measure aims to review the provision of, impacts of and any barriers to providing special measures to vulnerable and intimidated victims and witnesses.

Its central research questions are:

1. How are victims and witnesses' needs assessed for special measures?
2. Is need going unmet and why?
3. How might needs assessment be improved?
4. How effective are special measures and are there barriers to their effectiveness?
5. Are some measures under-used?
6. What is the picture of provision under Covid?
7. What is the wider experience of victims and witnesses in court?
8. What data is needed to improve provision and delivery?

1.4 Methodology

This review took a mixed methods approach to understand current provision of, barriers to and impacts of special measures. This allowed us to examine these issues using quantitative and qualitative data to understand current policy, practice and process. The researchers used several research methods to gather data and evidence, including surveys with the magistracy and judiciary, interviews with representatives from criminal justice agencies and expert stakeholders, and analysis of published data sources.

The report draws on several sources of data and evidence for its conclusions and recommendations:

- 179 survey responses from members of the magistracy and judiciary (92 magistrates; 10 district judges; 77 Crown Court judges);
- an online survey conducted by the Witness Service staff and volunteers which received 105 responses;
- interviews with 18 stakeholders and experts, including representatives from criminal justice agencies;
- seven interviews with police, CPS and Citizens Advice Witness Service professionals in four discrete areas;
- data from the Victims' Commissioner's survey of rape survivors from 2020; and
- data from HMICFRS and HMCPSI inspections.[12]

The review complied with the Office of the Victims' Commissioner's Ethics Protocol and the key ethical principles of social research. The report was peer reviewed by external research experts who examined the methodology, presentation of findings, and appropriateness of the conclusions and recommendations. Further information about the methodology and data collection methods can be found in the Annex.

[12] HM Inspectorate of Constabulary, Fire and Rescue Services, and HM Crown Prosecution Service Inspectorate.

1.5 Limitations

Because the sample in the three surveys were all self-selecting, we cannot say the findings are in any way representative of the populations from which they are drawn. Rather, like the interviews, they give insights from interested members of different groups (e.g. victims, judges and magistrates) who have an important view on special measures. The key limitation of this work is that sampling is not representative and sample sizes are small, often below 50 for a given group surveyed.

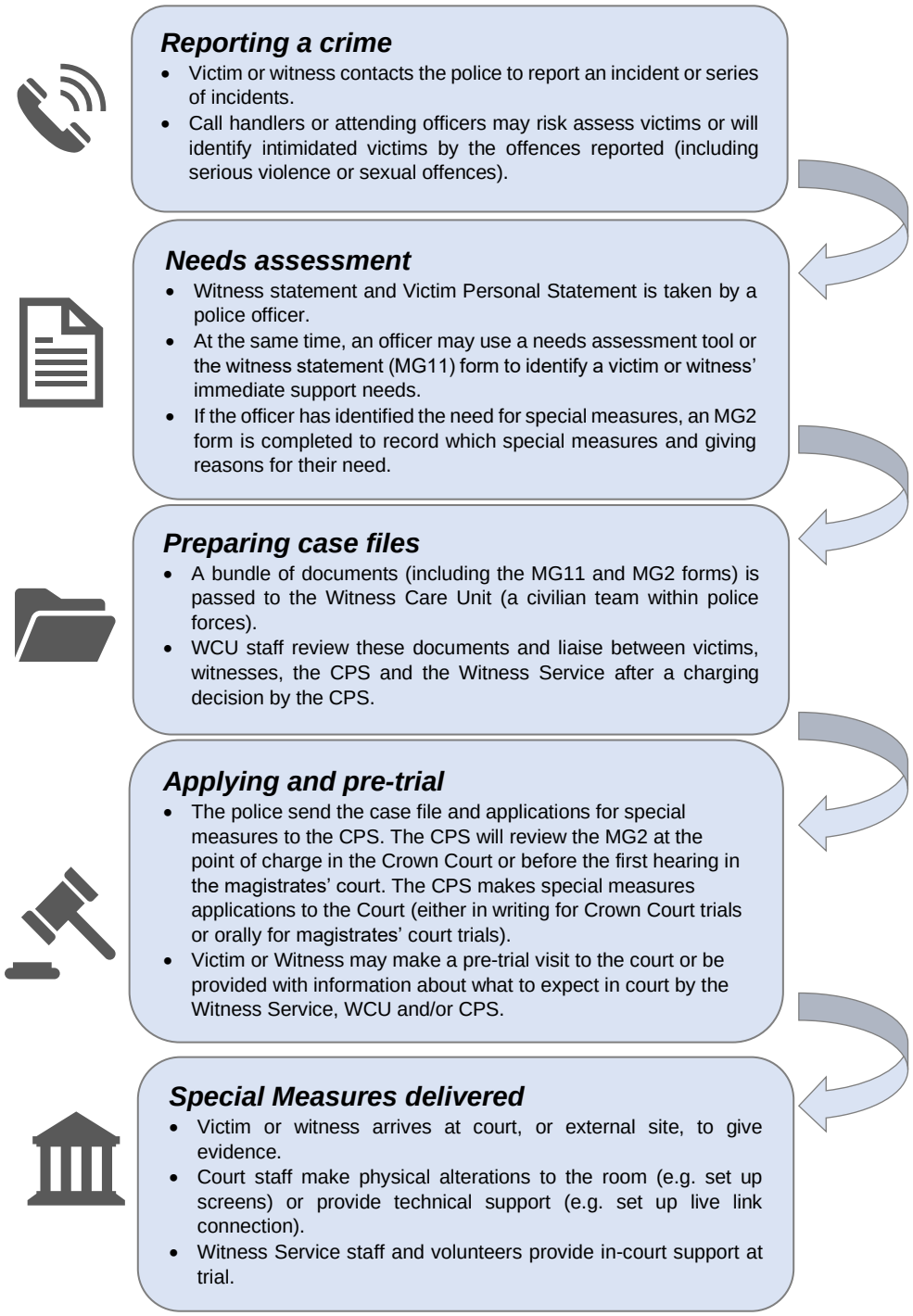
While this should be borne in mind when considering proportions and percentages, we nevertheless take encouragement from the fact that there was considerable commonality across the findings from different groups. Much of the time, an observation made by one group triangulated with an observation from another, suggesting validity.

Not every party involved in special measures is represented here: we do not have the views of frontline officers or court staff, for example. The voice of witnesses is also not at the fore in this research. Resource constraints and the complexities of doing interviews with the general public during Covid meant that we do not have as much of the witness' perspective as we would have liked. This is an area for future work, although we hope that first-hand account accounts of victims' experiences from the Witness Service, plus data from our survey of rape survivors from 2020, go some way towards initiating discussion about impacts on victims.

2. Assessing need for special measures

2.1 Introduction

The process of giving evidence with the aid of special measures begins with an initial police assessment of witness needs at the reporting stage. Witness needs can also be picked up by other agencies subsequently, a kind of 'safety net' approach which should mean that needs are well identified in most cases. Based on interviews with experts and interviews in our four case study areas, this section describes how needs are assessed and special measures are applied for. It examines whether there is evidence of gaps or shortcomings which might result in witnesses not receiving the special measures they need. It also examines whether the needs of certain groups are more likely to be missed. The key points in the process are set out in the diagram below.



2.2 Identifying vulnerability and intimidation

Police officers

The process of identifying a need for special measures begins with a witness' early interactions with police officers, who are tasked with making an initial assessment of whether the victim is intimidated or vulnerable. There is no national protocol but the assessment, as described to us by expert interviewees, has multiple aims: to assess whether there is an entitlement to enhanced rights under the Victims' Code;[13] to assess immediate support needs; to identify any safeguarding concerns; and to reassure the witness that they may able to use special measures. Vulnerability and/or intimidation will be noted on the witness statement form (the MG11) and if a need for special measures is identified, officers will also fill in another form, the MG2, which specifies which measure(s) the witness may need.[14]

Witness Care Units

The second step is when the case file containing the 'MG' forms goes to the Witness Care Unit, staffed by civilian police employees and a key point of contact between the witness and the criminal justice system. They inform victims and witnesses of details like hearing dates, but are also responsible for assessing vulnerability and intimidation in the context of what support a witness might need to give their best evidence. They check the MG2 forms are properly filled out and liaise with the CPS and court-based Witness Service, staying in touch with the witness until trial. They should tell the witness if their special measures have been granted (although this can be done by the CPS if there is a late application late or verbal applications) and any changes in date, time or court for trial.

CPS

Prosecutors receive the case file from police and any application for special measures is considered as part of the pre-charge process. They must judge whether the witness' needs have met the special measures test,[15] based on the MG forms and discussion with police officers and the Witness Care Unit. They make the application in court. Sometimes in reviewing the documentation and watching an ABE interview they may spot a need for special measures not seen by the police. Applications may be made until the day of trial. In the Crown Court they are usually made well in advance whilst in the magistrates' court, where cases progress more quickly, oral applications are usually made by the prosecuting advocate at the first hearing.[16]

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[13] See p.17 of the Victims' Code.

[14] Other MG forms are also relevant, for example, the MG5, which is the case summary. We found variation in terms of which forms were read by the WCUs across different areas and across different cases. One interviewee noted that how much was read may depend on the type of case (e.g. a RASSO case compared to one in which eligibility is not automatic) and the amount of time the member of staff has.

[15] The litmus test of the special measures regime appears in s.19(2) of the Criminal Procedure Rules which requires the court to consider which measures will 'maximise the quality of the evidence'. For witnesses under 18, it is presumed that the test in s.19(2) is satisfied by playing their visual recorded interviews with the police as their evidence-in-chief, and by cross-examination via live link (s.21(2)). In certain circumstances this presumption can be displaced. In all other cases, s.19(2) makes it clear that the measures should be tailored to the needs of the individual witness and defendant, and CrimPD I, para. 3D.2, and CrimPD V, paras. 18A.1 and 18A.2, now encourage flexibility in devising a combination of appropriate special measures. See: https://www.cps.gov.uk/legal-guidance/special-measures.

[16] There are time limits to applications: Criminal Procedure Rules 18.3: "*A party who wants the court to exercise its power to give or make a direction or order must— (a) apply in writing as soon as reasonably practicable, and in any event not more than— (i) 20 business days after the defendant pleads not guilty, in a magistrates' court, or (ii) 10 business days after the defendant pleads not guilty, in the Crown Court; and (b) serve the application on— (i) the court officer, and (ii) each other party.* See Criminal Procedure Rules and Practice Directions 2020, Part 18. Available at: https://www.gov.uk/guidance/rules-and-practice-directions-2020

Both CPS and WCU interviewees told us that Independent Sexual Violence Advisors (ISVAs), Independent Domestic Abuse Advisors (IDVAs) and victims support services will often flag vulnerability to the police and/or CPS. Registered Intermediaries will also highlight to the CPS issues that have been missed elsewhere or highlight support measures that could encourage best evidence.

Court-based Witness Service

The final link in the chain for identifying need for special measures is the court-based Witness Service, currently run by Citizens Advice.[17] The staff and volunteers look after witnesses on the day of trial and, if the Witness Care Unit asks, can give earlier tailored support such as a pre-trial familiarisation visit to the court or a rehearsal of using a special measure. An outreach service for vulnerable and intimidated witnesses gives enhanced support which might include home visits to prepare a witness for trial.

Prosecutors and Witness Care Unit staff noted that the Witness Service can take an important role in identifying victim and witness vulnerability. They frequently pass information on to facilitate applications for special measures. Witness Service participants suggested that their staff and volunteers can also a key role in better matching special measures to witnesses, who may only understand what is involved when they make a pre-trial visit. If a witness decides, for example, that they would prefer screens instead of a live link, the Witness Service will ask the WCU for the CPS to make a new application. Even a change of mind on the day or a witness' need only becoming evident then can be accommodated by a fresh application.

Witness choice and special measures

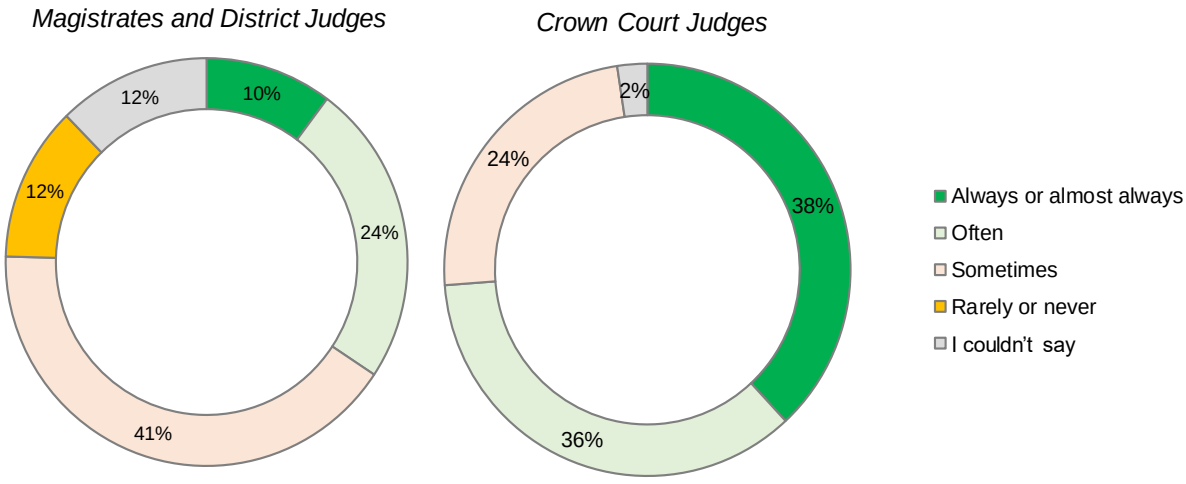
The Victims' Code specifies that witnesses will be asked their views on which special measures would suit their needs. Our recent survey of rape survivors showed nearly two thirds of respondents who appeared in court recalled being given this choice.[18]

2.3 Judges' and magistrates' opinions on the quality of pre-trial needs assessments

As described above, we have a multi-stage process in the assessment of need and specification of special measures. Ideally this step by step multi-agency process should mean that each stage acts as a safety net for an earlier one and we would expect magistrates and judges to feel that vulnerability was usually identified before trial. However, as shown in the pie chart below, only a minority (10%) of magistrates' court respondents felt this was the case. The majority (53%) felt that vulnerability was only successfully identified some of the time, or less often (see Figure 2.1, pie chart on left).

[17] The Witness Service is independent of HMCTS. It is run by Citizens Advice.
[18] See *Rape survivors and the criminal justice system* (2020): https://victimscommissioner.org.uk/published-reviews/rape-survivors-and-the-criminal-justice-system/

Figure 2.1: In your experience, how often are vulnerable victims and witnesses having their needs accurately assessed prior to coming to court, i.e. by the police and/or the CPS?



(Number of respondents = 49 (Magistrates and District Judges) and 42 (Crown Court Judges)

Some magistrates and district judges thought that careful consideration of victim and witness needs in advance of proceedings in the magistrates' court was often lacking. Needs were missed until late in the process, or not considered unless the witness was in an offence category where fear or vulnerability would be obvious:

> *In DV [domestic violence] cases, special measures are usually applied for and granted. In cases involving youths, the youth is granted special measures by default. I have not experienced a case where any special measure has been asked for outside of these 2 (above) categories. Being disabled myself, I am attuned to the needs of this section of the community, perhaps more so than others, but I cannot recall any special measures being asked for in any case that I have been involved. (magistrate)*

> *Often asked for at the very end of the trial management and sometimes as an afterthought. (magistrate)*

> *In many cases, it is the bench, rather than Police or CPS, which prompts a request for special measures, consideration of which comes up as a matter of course when completing the Preparation for Effective Trial form. (magistrate)*

> *There seems to be an assumption that being a witness is fine and why would anyone worry about it. It is often the Clerk who asks about 'any special measures?' which prompts the CPS to ask. (magistrate)*

When asked the same question, 24% of Crown Court judges said vulnerability was only successfully identified some of the time. This still suggests around a quarter of judges felt accurate assessment was patchy, with only 38% feeling it was always or almost always right (see Figure 2.1, pie chart on right). Their overall view seemed to be that needs assessments were not always sufficiently thorough, the needs of a witness who did not fit into an 'obvious' category might be missed, or the more nuanced needs of any witness might be missed:

> *There is a tendency to identify the 'obvious' witnesses - victims of sexual offences or domestic violence, school children but often to fail to identify others or make any enquiry of them e.g. eyewitnesses, young people not still at school etc.*

Two other Crown Court judges said:

> *I think that the way in which this has been approached by the police over the years has, in my view, really declined. I don't think that officers proactively think of special measures, save in the most obvious of cases and then they don't do the groundwork to enable a proper application to be made. However, there are also issues with the CPS. The applications seem simply to regurgitate informal comments made by witnesses. Often it can feel like a tick box exercise rather than the police and CPS working together in a professional way to further the best interests of their witnesses by putting together a proper application. I think that this is particularly so in the less obvious cases – particularly those concerning older, vulnerable witnesses where there might be deterioration in condition between offence and charge (which is, sadly, now often taking 18 months or more).*
>
> *The standard features which trigger applications are clear and commonplace and often the automatic entitlement is fulfilled. The police though do not seem to address the specific, individual positions of witnesses, although they may be catered for in any event by the raft of provisions which bring about automatic entitlement.*

Another judge wrote of how needs may be missed by the CPS because, in their view, the CPS prosecutor may read a transcript of the ABE interview rather than viewing it and seeing the witness communicate.

2.4 Other evidence on identifying vulnerability and intimidation

There is a scarcity of recent systematic evidence on how effectively vulnerability and intimidation are identified with which to compare these perceptions. However, a carefully designed and executed study conducted shortly after special measures were introduced (Burton, Evans and Sanders, 2006) found a significant gap between the 24% of witnesses who, on a conservative estimate, were likely to be vulnerable and intimidated witnesses[19] and the official estimate of those who had been identified as such, at 7-10%. This study is quite dated, and we would hope this gap would be narrower now.

Yet more recent inspectorate data based on analysis of both police and CPS case files has suggested vulnerable and intimidated witnesses may still be falling through the net. This 2015 HMIC inspection found that in 23% of 337 case files sampled from across police forces, the officer had not recorded whether the witness had any particular needs that would require support should they need to give evidence (HMIC, 2015).[20] In 52% of the 168 files in which inspectors considered there should be an assessment for special measures, none was done, and in a third of the remainder, the information was deemed inadequate. Of 195 CPS case files that involved vulnerable or intimidated witnesses, there were shortcomings in that police had not identified vulnerabilities to the prosecutor in 21% of cases. The CPS had correctly identified vulnerability but not put steps in place to manage the risk in 28% of cases. A similar inspection is planned in 2021/22, which the Victims' Commissioner welcomes.

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[19] A full 54% were identified as potentially vulnerable or intimidated, including 45% who self-identified as such, but applying the 'three stage test', the researchers arrived at the estimate of 24% who should qualify for special measures. See Burton, M., Evans, R. and Sanders, A. (2006). *Are Special Measures for Vulnerable and Intimidated Witnesses working? Evidence from the criminal justice agencies.* Home Office Online Report 01/06, Research Development and Statistics Directorate, Home Office.
http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.624.6353&rep=rep1&type=pdf

[20] HMIC (2015). *Witness for the Prosecution: identifying victim and witness vulnerability in criminal case files*. Available at: https://www.justiceinspectorates.gov.uk/hmicfrs/publications/vulnerability-in-criminal-case-files/

Across the system there is a scarcity of centrally collected administrative data that might give us a clearer picture of the extent to which need is going unmet, so whether the gap between the 7-10% and 24% has narrowed or remained. With a lack of detailed demographic data on witnesses, we also don't know which types of witness might be under-serviced. The need for better data is discussed at the end of this report.

2.5 Whose needs may be being overlooked?

We asked our stakeholders, experts and professionals who work with victims in the four sampled areas whether they had any observations on the types of witnesses or the type of need that can go unidentified. The answers given, roughly in order of how frequently they were mentioned, are set out in the table below.

Type of need	**Rationale**	**Participant organisations who identified this group as at risk of needs being missed**
Mental health difficulties e.g. ADHD; high functioning autism; bipolar disorder.	Victim may not wish to divulge, perhaps fearing this may count against them as a witness; condition itself may inhibit engagement; condition may fluctuate and worsen nearer to trial.	Police; NCA; academics; CPS, Witness Service, judges.
Unacknowledged or under-acknowledged communication need	Need for an intermediary can be spotted late in the process; communication needs may be missed, particularly in young people.	Academics; CPS; magistrates and district judge.
Witnesses to more 'ordinary' offences	Offence-led focus of some police/WCU processes may lead to victims and witnesses of some crimes (e.g. domestic abuse) being more readily identified than others.	Witness Service, judges and magistrates.
Defendants	Ineligible according to statute.	Registered Intermediary; CPS; magistrates; judges.
Victims of labour exploitation in modern slavery offences	Police identified a disparity in modern slavery offences: modern slavery victims who have been sexually exploited are automatically 'intimidated' and ABE interviews are automatically admissible. Victims of labour exploitation do not have quite the same entitlements in law.[21]	Police; NCA.
Older witnesses	Lack of automatic eligibility; possibility of a deterioration in function from while awaiting trial.	Witness Service; judges.
Defence witnesses	Lack of provision.	Judges.
Witnesses in murder trials	Have a non-standard process for witness care; unlikely to be seen by the Witness Service before trial.	Witness Service.

[21] See https://www.cps.gov.uk/legal-guidance/special-measures

We can pick out a few of these groups for further discussion. The most frequently cited group was those with mental health needs. An academic said they felt mental health needs were often 'overlooked' because people may be reluctant to volunteer this information. Since identification of vulnerability is key to special measures, modified questioning and other adjustments, this may place them at disadvantage. A Witness Service manager spoke similarly of those with learning disabilities who are 'adept' at hiding issues because they have done this for so long. She felt they might benefit from measures like removal of wigs and gowns. In her words:

> *You see people sometimes and the barrister is talking to them and they're just nodding and you think no, this is not going in. It's very sad and these people are constantly failed and let down. I think they're not giving their best evidence.*

A CPS interviewee noted that Registered Intermediaries were sometimes appointed at a later stage than the Achieving Best Evidence interview, so that help in giving 'best evidence' is missed at this crucial stage. This aligned with the comments from those who presided over the Youth Court, who were concerned about young people with communication difficulties whose needs were not addressed as soon as they should be. One deputy district judge said:

> *When child witnesses are referred to in the IDPC [Initial Details of the Prosecution Case] at the first hearing, I often ask whether the child will require an intermediary or any adjustments. I am often told there is no information on the point or the witness appeared not to need any assistance at the time of making their statement/[Achieving Best Evidence interview]. It needs to be a compulsory question to be addressed in the [Preparation for Effective Trial]/[Better Case Management] forms at the first hearing before the police will routinely make a note of this information so the appropriate adjustments/directions can be made at the first court hearing.*

Lastly, a couple of Crown Court judges also noted that the needs of vulnerable defendants (who are not currently eligible for special measures) and defence witnesses (who are currently eligible) are being missed. Several academics and stakeholders felt that vulnerable defendants should be eligible for the services of an intermediary to make the court procedures clear and accessible for those with learning or communication difficulties.

2.6 Conclusion

This section outlined the process of assessing a witness' need for special measures from reporting to trial and set out some evidence that judges and magistrates do not think vulnerabilities are always identified before coming to court. This stood out in the magistrates' court, where only 10% of our respondents felt that vulnerability in witnesses was always or almost always identified by the police and CPS. This is likely to be based on their observations of witnesses appearing at trial, but there may be additional, hidden risk, namely that witnesses may not attend because, in the words of one magistrate:

> '*they have not been assured or are not confident that the right measures will be put in place to protect them and to allow them to give their evidence without fear of intimidation.*'

The next section looks at why needs may be being missed and how these deficiencies might be addressed.

3. Why are needs being missed?

3.1 Introduction

Our finding that over half of magistrates and nearly a quarter of Crown Court judges in our surveys felt that that vulnerability was accurately identified only some of the time is concerning. This, alongside the 2015 inspection evidence of appreciable shortcomings in case files, raises suspicions that the process of assessing need is not always as good as it could be. Our review of the process suggests several possible reasons for this.

3.2 Needs assessment by police officers

Responding and investigating officers are required to assess victim and witness vulnerability and intimidation for three purposes: to ensure their immediate safety, to identify support needs, and assess the need for special measures should the case come to court. Currently, there is no regular evaluation of the effectiveness of these initial needs assessments undertaken by police officers. Although the 43 forces are assessed by the appropriate inspection body according to how effective they are at protecting those who are vulnerable from harm and supporting witnesses, inspections do not drill down to this level of detail.[22]

Nevertheless, there is reason for concern about the effectiveness of police officer needs assessments in relation to special measures. Stakeholders, experts and interviewees in our sample areas pointed out how much a busy first responder or other officer needs to do in these early interactions with witnesses, including determining whether a crime has occurred and what evidence there is. At a point where there is pressure to do so many things 'in the moment' (as one interviewee put it), witness needs further down the line may not take priority.

Aside from time, timing may also play a part. A Crown Court judge noted that to the officer, this may feel very early in the criminal justice process to bring up the subject of going to court and discuss it in detail:

> *I think there is sometimes a reluctance to broach the subject with a witness as it directs focus on the possible need to attend court. Everyone hopes they will not have to. This can lead to inadequately prepared applications.*

Officer attitudes to this part of the job may also vary. An academic who had done research with frontline police officers to improve needs assessments told us some frontline officers see victim care as very much part of their job, while others see it as the responsibility of victim service organisations and Witness Care Units.

Another expert who worked extensively with police who interviewed vulnerable witnesses believed that sometimes the 'MG' forms were inappropriately seen as the needs assessment for vulnerability or intimidation in and of themselves, rather than the output of a more in-depth process:

> *I don't see a lot of needs assessments. And I think there needs to be a bit of work around what that looks like. Often if you say to a police officer, 'where's your needs assessment?' they'll point you to the back of the written statement forms, the form called MG11. But when you look at it, it's a tick box thing. Is vulnerable? Tick. Is intimidated? Tick. Well that's not an assessment. That might be the conclusion you*

[22] For overall context, it should be noted that the vast majority of forces (33/43) were rated 'good' on this general measure relating to witnesses, with only nine rated as 'requires improvement' and one as 'inadequate' in 2018/19. This is an improvement on the 2016/17 inspection, when 22/43 were rated good, 16 required improvement and 5 were found inadequate.

reach from the assessment, but that's not the assessment itself. So, there's an issue about how that works. We need to be a bit sharper.

The point was underscored by one of interviewees from a Witness Care Unit, who noted how on the information they received from police officers:

A lot of the time the child witness is missed off, and a lot of the time intimidated is missed off. Why? I don't know, they seem to think 'we've put vulnerable, so that will do.'

We asked an academic expert who has carried out work on this with frontline police officers and they made the following suggestions of what should be included in a needs assessment: age, gender, race/culture, disabilities or illnesses, crime type; injuries; if perpetrator known to victim; living arrangements; employment.

These are the kind of criteria which police officers should be using already. They are trained to use 'professional curiosity' to spot vulnerability and intimidation to look beyond the obvious indicators of a witness' circumstances.

However, exercising such professional judgement may be easier said than done, particularly if, as some experts told us, witnesses do not wish to divulge certain vulnerabilities (mental health conditions, literacy and learning disabilities) for fear of this undermining their credibility in the officer's eyes. One or two experts also noted that at these initial interactions intimidation or vulnerability may also be masked by particular behaviours (for example, they are acting aggressively or are under the influence of drink or drugs at the point of reporting).

In sum, our evidence suggests that police officer needs assessments for special measures may not be adequate, and this may be a function of lack of time, timing (too early in the process), lack of tools and witness willingness or ability to divulge. While police officers will always need to carry out an initial assessment of vulnerability in relation to safeguarding and immediate support needs, the detailed discussion about special measures may be better dealt with later in time and later in the chain of organisations responsible for delivering special measures.

3.3 Automatic eligibility

Box 1. Sexual offence cases and automatic eligibility

Our evidence also suggested that automatic eligibility may, in some instances, encourage a kind of 'tick box' attitude which means that witness needs at trial aren't delved into in sufficient detail. Thirty-nine per cent of Crown Court judges in our survey said they had encountered cases in which automatic eligibility for special measures for complainants in sex cases had meant that special measures had been granted without potential witness vulnerabilities being identified. This means only the minimum special measures might be being offered, rather than checking for vulnerabilities that would mean further or more tailored support. One judge wrote that this happens 'all the time', damping down the quality of a witness' evidence.

The high proportion saying yes to this question may suggest automatic eligibility can be, in and of itself, a barrier to the *thorough* assessment of vulnerability and a witness' attendant needs. This theme that reprises some of the judges' comments around the police and CPS only focusing on 'obvious' witnesses and/or obvious vulnerabilities. For example, one judge gave a specific case study in which it became apparent during trial that a complainant in a sex offence case who merely had screens had, in their opinion, severe Post-Traumatic Stress Disorder. They then had to 'severe restrictions' on the defence barrister's questioning.

3.4 The MG2 special measures form

As discussed earlier, current 'MG' forms are considered insufficient as an initial witness needs assessment. Those experts who knew these forms well felt they were lacking. The MG forms are not centrally owned and forces can adapt these as they see fit, so some forces will have done so, but unless all forces have made the same updates this is likely to reduce consistency of practice.

CPS interviewees noted that MG2s were often lacking in enough detail to present a good case for granting special measures and WCU staff talked of requests for more information bouncing between the CPS, WCU staff and investigating officers. These shortcomings may link back to the brevity of the MG2, as well as the conversations officers have with victims.

At the time of writing, the CPS was piloting a more comprehensive, explanatory MG2 for police officers to use. It contains several noteworthy improvements, including a space for the witness' assessment of their own needs. Witnesses should have a say in the special measures applied for and it is important that this right is met, but at the moment we have no way of reliably assessing how much that happens. We await the results of this pilot, but in the short term this is likely to be a good step forward in the assessment of need and choice of the right special measures for each witness.

3.5 Varied witness care models

Across our four areas the model for delivering this part of the service varied (see box below).

Area 1	Witness Care Unit (WCU) of over 40 staff (largest we spoke to); cases are allocated the day after charge, all witnesses are telephoned, and a detailed needs assessment conducted and recorded on a bespoke form. Each witness has one officer from charge to outcome and contact is ongoing, around key dates.
Area 2	Recently changed from a WCU to Prosecution Hub, tasked primarily with file building to improve case file quality. All witnesses are no longer spoken to. Needs assessment has been shortened, and caseworker was unsure of how much support witnesses now generally receive.
Area 3	WCU is separate to a second unit that is responsible for file building and is another point at which vulnerability may be spotted. Cases are allocated after first hearing. Each witness has one officer from charge to outcome and all are spoken to or sent a letter if not available by phone.
Area 4	Court Liaison Unit (smallest we spoke to) moving from a model where vulnerable and intimidated witnesses were managed by a one-stop shop independent charity, to re-incorporating this function (and staff) into the force Liaison Unit. Witnesses are contacted several days after listing for trial to discuss their needs, then on a regular basis after that.

In at least two of the units we spoke to the WCU (or equivalent) carried out a needs assessment in addition to that carried out by frontline officers. Their practices varied, perhaps affecting amount and quality of contact. Some respondents thought that changes in their organisation had reduced the quality of service.

A Witness Service interviewee noted how in her area, not all witnesses are being telephoned: rather, they will receive a letter along the lines of, 'if you have a problem, please contact us'. In her view, this contributed to 'huge gaps' in identified need in their area (which encompassed, but was not limited to, Area 4).

3.6 Lack of overarching responsibility

Identifying need and applying for special measures spans two units in the police, the CPS and Witness Service. No one has primary responsibility, with a consequent risk of people slipping through the net. Although the shared responsibility for identifying need for special measures should ensure that needs are not missed, case file analysis and the opinions of judges and magistrates suggests that in a fair number of cases this still happens.

Our expert interviewees in the police drew attention to the problems arising from this issue of fragmented responsibility for special measures: that the witness could be repeatedly asked the same or similar sets of questions; that they might have to wait a long time while information was passed back and forth across agencies; and that information (e.g. the precise reasons for an application being rejected) might get lost.

A Witness Service interviewee brought this problem to life, explaining how information can be delayed and how this might affect a witness:

> *They're all working independently of each other and actually it just takes one person to have some really crucial information that they're not passing on to the other agencies that has a massive impact on your day to day working. So if the CPS know that someone's going to plead guilty, and we're going through a load of work with a witness to prepare them for court that's a lot of work that we're doing and potentially a lot of trauma that the witness could be re-living or going through that they don't need to. Equally we have the same with HMCTS, where they're scheduling a lot of trials in and the CPS know that there's going to be a guilty plea so that's court time that could be allocated to a different case... the system sometimes feels quite fragmented.*

Equally an anticipated guilty plea can change to not guilty. CPS interviewees noted that at this late point, the system has to move quickly to identify vulnerability and intimidation and apply for the right special measures, particularly in the magistrates' court where cases progress quickly from first hearing to trial. They said in their experience courts would still grant special measures on the day. However, this point would be too late for some special measures, like the appointment of a Registered Intermediary, so choice may be limited.

The process does not lend itself to tailoring care or speedy change: for example, when a witness changes their mind about what special measures they would like following a court visit. This requires liaison across all four agencies/units in a complete repetition of the original process of applying for the first, less suitable special measure.

Our discussions suggested any problems are exacerbated by having multiple interfaces across systems. The WCU interviewee in Area 3, described how information can be duplicated and missed, requiring constant checking on their part to ensure the process goes smoothly. For example, they said the CPS may ask the case builder to go back to the officer for an MG2, without realising that the WCU has already made this request.

Equally, it seemed that problems are lessened by good links across services. The CPS representatives felt that good communication between the police and CPS on special measures was key to effective delivery, and that this could be improved. In Area 1 co-location across the WCU, Witness Service, IDVA and ISVA services was seen by interviewees as a key reason why they felt witness needs were very well catered for in their area. Also in this area, each referral made to the Witness Service (see below) was accompanied by a bespoke file of information, containing case details including relationship between defendant and victim,

a detailed needs assessment, [23] and the status of special measures (applied for or agreed). We cannot tell how successful this is, but it should ensure the Witness Service is well-briefed and that the witness feels listened to.

3.7 Conclusion and recommendations

This section examined why vulnerable and intimidated witnesses' needs might be missed.

Recommendation 1: The police and CPS should streamline the process of assessing need and applying for special measures, focussing response officers on assessing immediate needs and putting the responsibility for special measures with Witness Care Units.

Recommendation 2: Police Witness Care Units should have overarching responsibility for needs assessment and special measures. They should be resourced to speak to all witnesses and armed with a thorough and standardised needs assessment process.

The process is multi-stage and involves four different parties, so the scope for communication lapses is high and relaying messages across agencies is likely to be lengthy. In our analysis, the process seems ripe for some simplification. There seems to be a need for an overarching framework to coordinate the provision of special measures, with each agency explicitly setting out its roles and responsibilities in a shared protocol. It seems unrealistic to rely on first response officers for much assessment for court-related measures. They have a lot to do an there is a statistically slight chance at that stage that the case will get to court. Witnesses would still need to have their needs assessed for safeguarding and support and would be informed about special measures. However, the in-depth conversation on special measures would happen later, with WCU staff. The WCUs have a pivotal role in the delivery of special measures which we feel should be formalised.

Recommendation 3: Defendants are made eligible for certain special measures: Intermediaries, as set out in s104 of the Coroners and Justice Act 2009.

The communication needs of defendants were raised several times and it could be argued that it is unfair that witnesses are automatically eligible to receive support to understand proceedings and give their best evidence, whereas defendants are not. The law to enable defendants to have the help of an intermediary is already in place and should be implemented.[24] A judicial review (*R (OP) v Cheltenham MC and Others)*[25] considered that the Ministry of Justice should reconsider eligibility of defendants and whether there should be equal provision. The Ministry of Justice should consult to determine which agency is most appropriate to have responsibility for conducting needs assessments for defence witnesses and defendants.

[23] Including: whether victim or witness; any relationships to defendant and other witnesses; access issues, disabilities; mental health; learning disabilities (e.g. help needed with statements); travel arrangements, where action/conversations are required; intimidation/risk factors; other referrals e.g. IDVA/ISVA if known; whether a pre-trial visit or Witness Service outreach has been already discussed.

[24] Section 104 of the Coroners and Justice Act 2009 (not yet implemented) will allow certain vulnerable defendants to give oral evidence at trial with the assistance of an intermediary. Until section 104 of the Coroners and Justice Act 2009 is implemented, there is no statutory framework for allowing the use of an intermediary for a defendant. In the interim, the practice has developed in the Crown Court whereby judges, exercising their inherent jurisdiction to ensure that the accused has a fair trial, have granted applications by the defence to allow the defendant to be assisted by an intermediary during their evidence and, in many cases, throughout their trial. See: https://www.cps.gov.uk/legal-guidance/special-measures

[25] See: http://www.bailii.org/ew/cases/EWHC/Admin/2014/1944.html

4. Special measures in court: how effective are they?

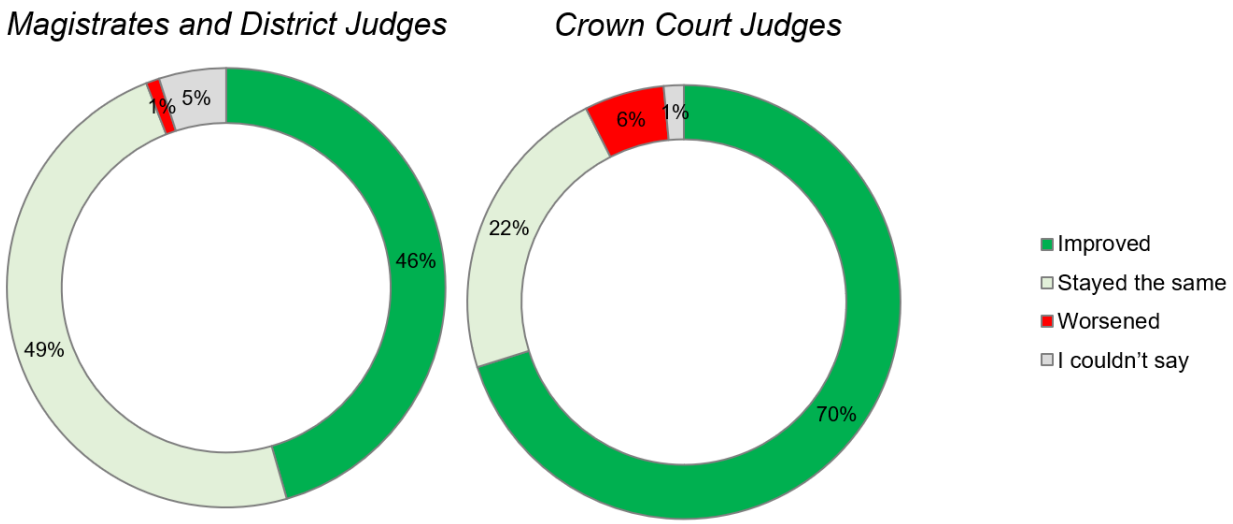
4.1 Introduction

The central aim of special measures is to improve the quality of evidence given by vulnerable and intimidated witnesses, also expressed as helping them to give their 'best evidence'. They are also intended to help relieve some of the stress associated with testifying.[26]

There was universal agreement across our experts that special measures are a good thing. One expert identified the introduction of Registered Intermediaries as the single biggest improvement in the criminal justice system over the last thirty years. Another called special measures 'imperative', noting that before them, 'life was very difficult'.

We also asked judges and magistrates whether they felt the provision of special measures had improved, stayed the same or worsened in the time they had been sitting. As Figure 4.1 shows, both groups overwhelmingly felt that provision had improved or stayed the same, with very few assessing it as worse. Notably, nearly three quarters of Crown Court judges felt that provision had improved.

Figure 4.1: Would you say the provision of special measures to vulnerable and intimidated witnesses who need them has improved, stayed the same, or worsened in the time you have been sitting as a Magistrate or Crown Court Judge?



Number of respondents = 101 (Magistrates and District Judges) and 67 (Crown Court Judges)

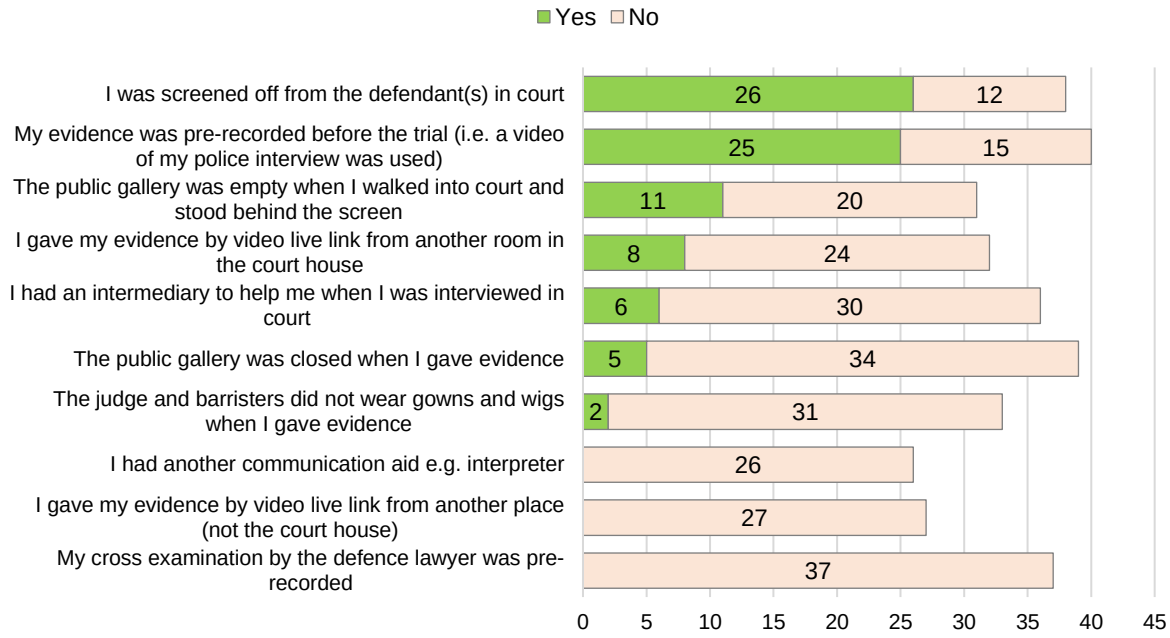
This section looks at the frequency with which special measures are used in court. It then examines the extent to which judges, magistrates and Witness Service staff and volunteers – who all see special measures in operation within courts - believe that the twin aims of special measures are well-met. Against a backdrop of the overall success of special measures, it also explores whether there are still barriers to their effectiveness, when used.

[26] CPS guidance. See: https://www.cps.gov.uk/legal-guidance/special-measures

4.2 The use and provision of special measures in court

We do not have statistics on the number or proportion of witnesses who apply for and use special measures in court. We understand this data is captured on the current court administration systems, but not in a way that is easy to extract and analyse.[27] However, our surveys gave an indication: as shown in Figure 4.2, around 2/3 of rape survivors in our survey who had given evidence did so behind a screen and around the same proportion had an ABE interview.[28] Other measures were much less widely used according to survivors, although surprisingly, around a third entered the court with the public gallery empty and around 10% gave evidence in private, which is an unusual step for the court to take.

Figure 4.2: Provision of special measures in court to rape survivors



(Number of respondents = 26 to 40)

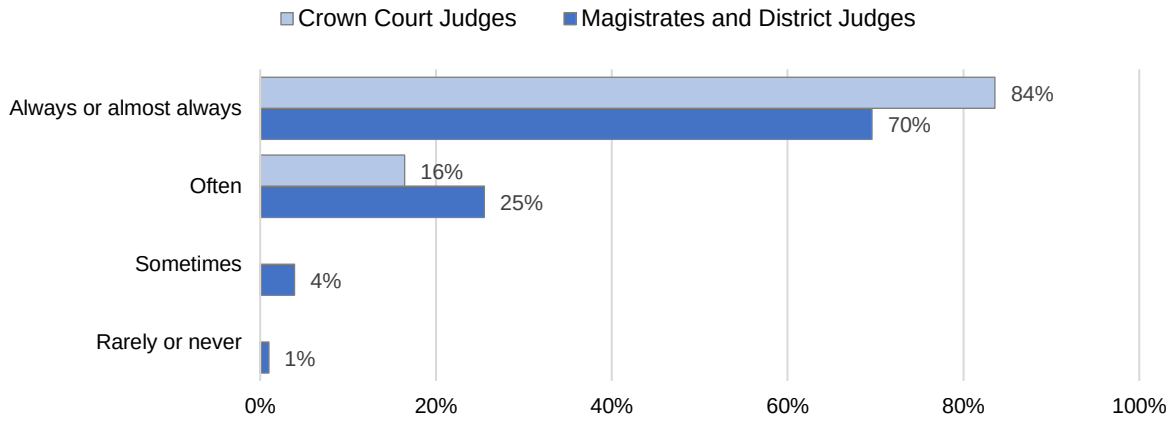
We also asked magistrates and judges to roughly estimate how often special measures were requested in trials over which they preside. Unsurprisingly, given the more serious caseload, the estimated frequency was much higher for the Crown Court (19% responding 'always or almost always' and 72% 'often'), compared to the magistrates' court (31% responding 'often' and the majority, 57%, responding 'sometimes').

As shown in Figure 4.3, judges and magistrates were also asked how often, when applied for, they granted special measures. Here too there was a difference: while 84% of Crown Court judges said they always or almost always granted them and 16% said they often did, just 70% of magistrates and district judges said they granted them always or almost always, and 30% said they did so less often. There was some evidence from open text responses that sometimes applications were not granted in the magistrates' court because applications came in too late.

[27] The data is captured in free text on the courts systems.

[28] See VCO (2020) *Rape survivors and the criminal justice system*: https://victimscommissioner.org.uk/published-reviews/rape-survivors-and-the-criminal-justice-system/

Figure 4.3. When applied for in your court, how often do you grant special measures?

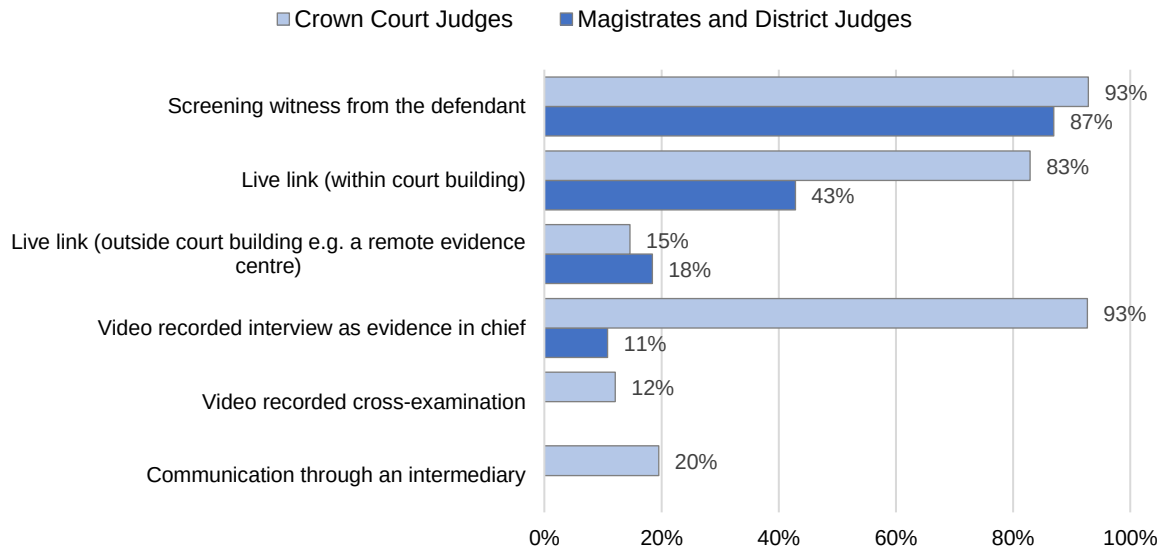


(n. of Magistrates/District Judges respondents = 102; n. of Crown Court respondents = 67)

As shown in Figure 4.4, respondents said screens were the most widely used special measure in both magistrates' and Crown courts. Live links within court buildings were seen to be used more regularly in the Crown Court than magistrates' court. Live links from outside court buildings, such as to remote evidence centres, were believed to be slightly more widely used across magistrates' courts. Only one judge and no magistrates said they sometimes saw evidence given in private (not shown in Figure 4.4. as values were less than one).

The use of a Registered Intermediary (RI) was particularly low in the magistrates' courts, with 17% of magistrates and district judges saying they sometimes saw RIs, and 2/3 rarely or never (the rest couldn't say). Just 11% of magistrates and district judges saw ABE interviews often or more frequently. This exposure seems low, given that a quarter of our respondents sat in the Youth Court, where we might expect there to be young victims of children and young people.

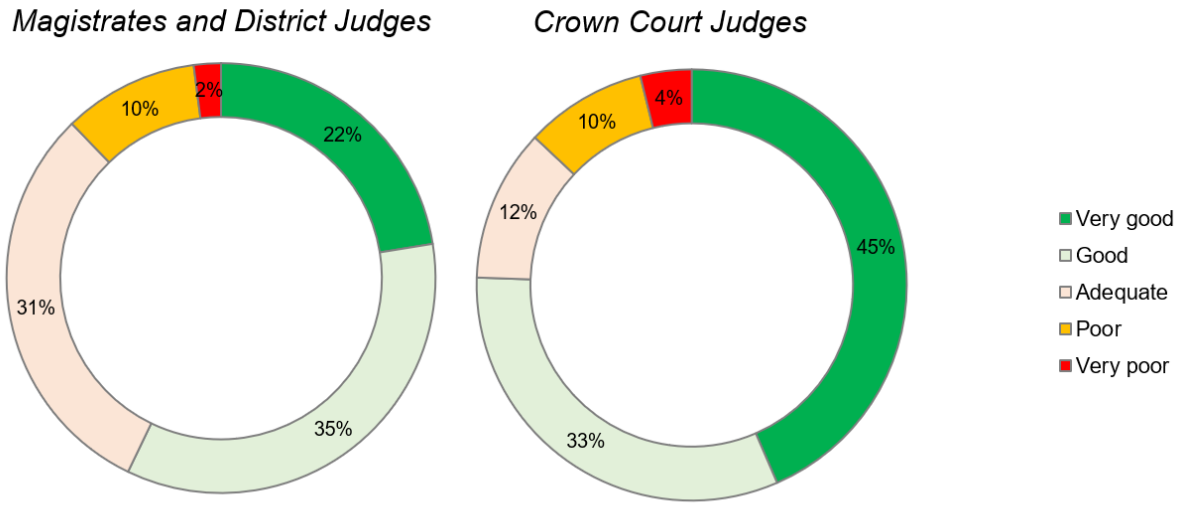
Figure 4.4. Proportion of respondents who answered 'Always or almost always' or 'Often' when asked *"in this sub-group of trials in which special measures are used, how often are the following special measures used?"*
(Excluding 'I couldn't say')



(Range of n. respondents Magistrates/District Judges = 27 to 48; Range of n. respondents Crown Court = 40 to 42)

While case mix is likely to explain the bulk of the difference between the lower and higher court, another factor may be availability and/or quality of provision: As shown in figure 4.5, only half the proportion of magistrates' court respondents rated the provision of screens as 'very good' compared to Crown Court judges (22% compared to 45%), and a far higher proportion of magistrates and district judges saw them as adequate or less than adequate (43% compared to 26%).

Figure 4.5: In your opinion, how good is the provision for screening witnesses from the defendant in your court (or the court you sit in most often)?



Number of respondents = 49 (Magistrates and District Judges) and 42 (Crown Court Judges)

Magistrates' and district judges' additional comments around provision tended to relate to the age and inflexibility of court buildings and poor technology. However, in relation to screens, a magistrate wrote:

> *It is not easy to use screens as a means of special measures as the defendant has to leave court whilst the screen is erected and I am not convinced that the witness can't be seen as they are very old and flimsy.*

And a district judge said:

> *The layout of some of the court rooms is very unsatisfactory. In one court room, the "screen" is actually some cardboard taped to the side of the glass dock so the witness and the defendant are virtually stood/sat next to each other albeit they can't see each other. In other court rooms, the screens comprise a curtain pulled across the front of the dock so the defendant cannot see anyone in the court room including his lawyer.*

Box 2. Use of Registered Intermediaries (RIs)

Registered Intermediaries are specialists in communication provided to children and vulnerable victims and witnesses. The OVC report, *A Voice for the Voiceless* (2018), highlighted the inconsistent take-up of RIs, limited understanding of their role, and variation in how vulnerability and eligibility for RIs is assessed.

A Victims' Commissioner literature review on special measures, published in 2020, found: "Intermediaries are also widely endorsed as an intervention which greatly improves the quality of evidence elicited from vulnerable witnesses, both because of their expertise in relation to the formation of advocates' questions, and also because of their recommendations around the most effective combinations of special measures to invoke."[29]

Our surveys showed 17% of magistrates and district judges said communication through an intermediary was sometimes used in their court, whilst 66% said they rarely or never saw them. In contrast, 20% of Crown Court judges saw this often, 62% saw it sometimes, and only 17% said they saw them used rarely or never. Only 10% of magistrates and district judges said the provision of intermediaries was good in their court and 17% said it was adequate (67% could not say). Whereas, in Crown Courts, 17% said it was very good, 57% said it was good, and 21% said it was adequate.

Our interviews with National Crime Agency leads on RIs, prosecutors, and a Registered Intermediary, suggest areas both of concern and for improvement. Representatives from the NCA told us about a recent gap analysis which showed there are no areas (either geographical or skill-related), where the NCA is not able to get an RI. But in some areas it is somewhat harder and RIs may regularly commute from a surrounding location. Generally, we were told, there's enough supply to meet demand, though there was a significant spike in requests for RIs during the summer of 2020 – after the easing of lockdown restrictions.

A CPS prosecutor highlighted the risk of not identifying a witness' need for an intermediary early enough. Although prosecutors can request an RI after charge, the ABE interview may need revisiting "but there are obvious risks of revisiting, of getting a different account".

Several Witness Service respondents identified RIs as under-used, with need not being picked up until the day of trial, when witnesses might be given the option of adjourning or going ahead without the support they need. One said of this choice, "This is not acceptable justice." Another felt this happened because "we are a magistrates' court" and hence the cases are not deemed serious enough to justify an RI.

We also heard about the need for greater awareness of the role of intermediaries amongst police officers and judges and a need for officers to be trained in the characteristics of learning disability, stroke, delayed language development, and how a sexually abused, traumatised child might present. In addition, supporting the findings of Plotnikoff and Woolfson's 2019 report,[30] the RI we spoke to said they had experience of judges dispensing with the service of RIs before trial. This RI also told us, "I've had judges say, 'Well they've had a job they're not vulnerable', but they might have […] mental health problems or PTSD." We also heard about the need for continued support for the RI workforce, with issues related to delayed payments by police forces, unsupervised working arrangements, and the need for mentoring of newly qualified staff as they join the criminal justice system.

[29] Fairclough, S. (2020) Special Measures: Literature Review.
[30] Plotnikoff, J. and Woolfson, R. (2019). Falling short? A snapshot of young witness policy and practice.

4.3 Ground Rules Hearings (GRHs)

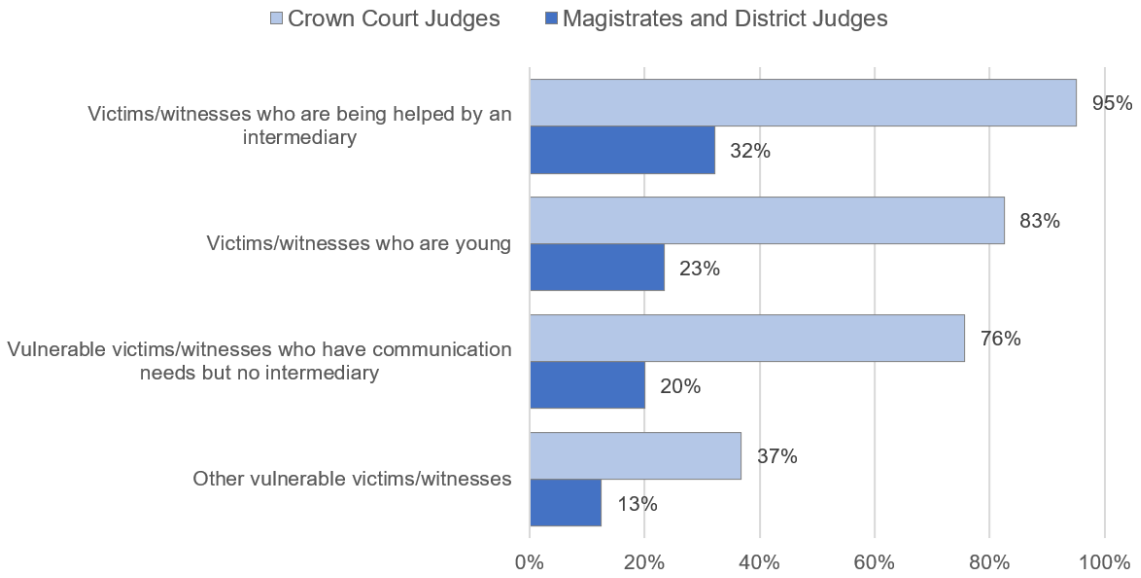
As discussed in the introduction, Ground Rules Hearings are widely considered to be good practice when the court is dealing with vulnerable witnesses. This is where the magistrates, judges and advocates discuss how a vulnerable witness' needs should be handled, for example style and content of questioning and need for breaks when giving evidence. CPS guidance on special measures states:

> *Ground Rules Hearings to discuss and establish how vulnerable witnesses will be enabled to give their best evidence are good practice in any case with a witness who is vulnerable or who has a communication need. In cases where an intermediary is engaged, Ground Rules Hearings are essential.*[31]

Encouragingly, there appeared to be high usage of GRHs for young and vulnerable witnesses in the Crown Court, particularly those assigned RIs (see Figure 4.6), at 95%. This figure concurs with a similar survey conducted with judges in relation to young witnesses, which found that 36/39 judges almost always held a GRH (Plotnikoff and Woolfson, 2019).[32] However, Figure 4.6 also shows a gap in the use of GRHs between magistrates' and Crown Courts: less than a third of magistrates and district judges felt that GRHs always/almost always or often happened in trials they presided over, even in cases with RIs.

Victims and witnesses who are being helped by an RI were most likely to have a GRH across Crown and magistrates' courts, and *other* vulnerable victims and witnesses (including those who were not young or did not have communication needs), the least likely.

Figure 4.6. Proportion of respondents who answered 'Always or almost always' or 'Often' when asked *"In trials you preside over in which special measures are used, how often are Ground Rules Hearings (GRHs) held, for each of the following types of victim* (Excluding 'I couldn't say')



(range of n. respondents Magistrates/District Judges = 28 to 32; range of n. respondents Crown Court = 37 to 41)

It needs to be remembered that the sample sizes for these surveys were small – they are not necessarily representative of what's happening in courts. Nevertheless, the results suggest

[31] https://www.cps.gov.uk/legal-guidance/special-measures

[32] Plotnikoff, J. and Woolfson, R. (2019). Falling short? A snapshot of young witness policy and practice. See: https://learning.nspcc.org.uk/research-resources/2019/falling-short-young-witness-policy-practice

that GRHs should be used more often, particularly in the magistrates' court. If as the CPS states, these are essential to enable vulnerable witnesses to give good evidence through an RI, it is not a good sign that two thirds of our magistrates' court respondents felt that they were only happening sometimes or less.

4.4 Magistrates' and district judges' views on the effectiveness of special measures

In our surveys, magistrates and judges were asked the extent to which special measures are effective in (a) lessening the stress and anxiety of giving evidence; and (b) meeting the aims of achieving best evidence from vulnerable and intimidated witnesses.

Table 4.7: perceived effectiveness of various special measures in lessening stress and anxiety of vulnerable and intimidated witnesses (magistrates and district judges)

Measure	Very effective/effective	I couldn't say
Screening witness from defendant	83%	2%
Live link (within court building)	70%	23%
Live link (outside court building)	53%	38%
ABE interviews	25%	72%
Registered Intermediary	20%	69%
Use of special communication aids	12%	85%
Evidence in private	8%	87%

(Number of respondents = 98 to 100, varying by measure)

As shown in table 4.7, the views of those magistrates and district judges who were familiar with each measure was overwhelmingly positive, but the high proportion answering 'I couldn't say' for some measures illustrated a lack of exposure to some special measures in the magistrates' courts. For example, while only 2% of the sample were unable to give an opinion on screens, nearly three quarters felt this about ABE interviews.

Respondents were also asked about the extent to which they felt individual measures met the aim of achieving best evidence and responses were very similar. For example, 86% agreed that screens achieved this (2% couldn't say) and 68% agreed in relation to live link in the court building (24% couldn't say).

Some open-ended comments suggested a lack of preparedness around special measures in the magistrates' courts, which may hinder their effectiveness. For example, one wrote that the need for screens all too often seemed to come as a 'surprise' on the day.

4.5 Crown Court judges' views on the effectiveness of special measures

Among Crown Court judges, the pattern of responses was similar, with nearly all judges seeing screens and live links as effective and high proportions seeing them as *very* effective (for example, 94% felt that screens were effective or very effective in meeting the aim of lessening anxiety - see Table 4.8 – and 94% felt this in relation to giving best evidence).

Table 4.8: perceived effectiveness of various special measures in lessening stress and anxiety of vulnerable and intimidated witnesses (Crown Court judges)[33]

Measure	Very effective/effective	I couldn't say
Screening witness from defendant	94%	0%
Live link (within court building)	91%	0%
ABE interviews	84%	12%
Registered Intermediary	67%	2%
Live link (outside court building)	76%	18%
Video recorded cross examination (s28)	40%	55%
Use of communication aids	34%	54%
Evidence in private	11%	85%

Number of respondents =67-69, varying by measure)

There was one striking discrepancy among this group: while 42% of judges felt that ABE interviews were very effective in lessening witnesses' anxieties around giving evidence, only 26% felt they were very effective in achieving best evidence.

Qualitative comments suggested several reasons for this: firstly, some judges felt that ABE interviews tended to lack focus and/or were poorly executed; secondly, there were problems playing back the interview in court, with technical glitches and poor-quality audio-visual; and thirdly, some judges were of the opinion that the impact of the evidence was diminished by not having the witness in the room. Judges wrote:

> *Video recorded evidence means jury see the witness on a small screen at a distance, the pace of the evidence is wrong - it doesn't give the jury the chance to concentrate on the important parts of the evidence. They don't get a 'feel' for the witness in the same way as when the witness is traditionally examined in chief by a person who has prepared step by step questions to enable the evidence to come out in a chronological flow. (Crown Court judge)*

> *I remain of the view that evidence given over a link by an adult rarely comes close to being as effective as evidence from a witness in court. The quality of picture and sound quality, the distance of the screens from the jury, the mere fact that the witness is in every sense removed from the court room and what is going on in it, lessens the quality of their evidence. (Crown Court judge)*

The point about dilution of impact is, perhaps, worthy of special mention because it came up unprompted across all surveys: one or two rape survivors mentioned being discouraged from using live links by the police or CPS for this reason; some Witness Service respondents were of the opinion that the emotional impact of the crime was not fully conveyed over video link and several magistrates and a larger number of Crown Court judges made similar points. In the words of one judge:

> *While these measures are really needed by many such witnesses I do fear that in the course of a trial where it is word on word the only individual the jury get to see in the flesh and hear giving evidence in the witness box is the witness who is saying it never happened - the defendant. I sometimes wonder if a witness on a television screen comes across as well as it would in court. Certainly if I was a defence barrister I would*

[33] It should be noted here that these tables do not fully reflect the perceptions of each measure's effectiveness as rated by those who are familiar with that measure. For example, we might assume that the 85% and 55% of respondents who felt unable to judge the effectiveness of evidence in private and s28 (respectively) had not presided over trials using this measure, and could exclude them on that basis. This would mean these two measures were evaluated as very effective/effective with almost all who had come across them, on a par with ABE interviews, screening the witness and live link within the court building.

be anxious to allow the use of live link rather than live evidence and s.28 measures as much as possible.

This is important because the attitude of professionals may affect both the choices witnesses are given, and the choices they make about special measures. The Victims' Commissioner's independently-authored literature review of special measures noted that:

> *There seems to be a prevailing view among criminal practitioners, and some witnesses, that evidence given by video link is less impactful on jurors and thus avoided. This is despite any empirical evidence which supports this view.*[34]

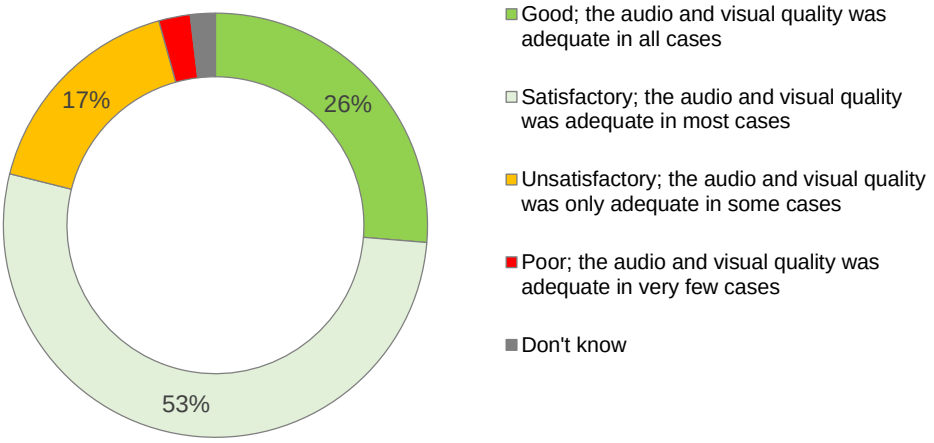
This suggests that no robust research supports what appears to be quite a widely held belief. Also, with increasing reliance on video-enabled communication during Covid, attitudes may be shifting, and/or the need to better understand the effects on juror perceptions becomes more pressing. This may be an area for future work.

4.6 Witness Service views on the effectiveness of special measures

Witness Service staff and volunteers are ideally placed to observe the usage and effects of special measures on witnesses in court. In our survey, we particularly asked about the use of video links in trials, as this was an increasingly important facility during the Covid pandemic.

We asked about the quality of video links used in court at the current time (November 2020) and just over half of Witness Service respondents rated this as, 'Satisfactory: the audio and visual quality was adequate in most cases', with a further 26% rating it as adequate in all cases (see Figure 4.9). Only just over a quarter rating the audio-visual quality as adequate in *all* cases feels low: for witnesses to give their best evidence, we would hope that the audio-visual quality would rarely or never be less than adequate. It is similar to the observation by judges (above) that playback of ABE was sometimes dogged by technical glitches.

Figure 4.9: In your opinion, what was the quality of video links generally like? (CA Witness Service staff)



(Number of respondents = 49)

[34] Fairclough, S. (2020). Special Measures Literature Review, p. 4. The review was conducted by an academic with expertise in studying special measures, on behalf of the Commissioner.

The main issues reported about video links were problems with technology, unsuitable link rooms and sites and a lack of preparedness and communication ahead of trial. These issues were reported to result in distress and discomfort for witnesses.

Respondents said that witnesses using video links were not always given the opportunity to speak to barristers or read statements ahead of appearing. The problem seemed to arise primarily with live links to another court (which has become more common since Covid), where the statement had not been sent over beforehand and where the witness was in a different location to the barrister. This could undermine the confidence and preparedness of witnesses.

However, it is important not to overstate these issues: most respondents (86%) felt that overall, the use of video-links had had a positive effect on witnesses' experience of giving evidence. Further, nearly all (94%) agreed that using video link had made the court more accessible to witnesses. As we noted at the beginning of this report special measures are mainly a good news story.

4.7 Conclusion and recommendations

Supporting earlier studies, our research found that witnesses find special measures helpful and judges and magistrates attest that they work. We make six recommendations based on the evidence presented in this section.

Recommendation 4: HMCTS publishes an audit of facilities across courts, updating the current audit if necessary.

Recommendation 5: The magistrates' court needs parity with the Crown Court, through equal provision of facilities and equipment to guarantee the availability of tailored support for vulnerable and intimidated witnesses. Needs assessments need to be rigorous, in spite of the challenges of assessing need and delivering special measures in the fast-paced environment of the magistrates' court.

Provision in the magistrates' court seemed to lag behind the Crown Court, with a sense that the Crown is better adapted and better prepared for special measures. HMCTS conducted an audit of court facilities in 2019/2020, which included questions about the number and adequacy of special measures facilities. We would like to see this data published and/or, if provision has improved because of the demands of Covid, we would like to see this updated.

It is important that assessment, facilities and provision in the magistrates' court is are good because the Domestic Abuse Act 2021 includes a statutory presumption of eligibility for victims of domestic abuse and many such cases are heard in the magistrates' courts.[35]

Recommendation 6*:* Quality of audio-visual is assessed as part of this process, including: size of TV screens; their positioning in court; sound and picture quality; and ease of set up. A guaranteed minimum standard is met across all courts.

We also found several issues that may reduce the effects of special measures, even in the Crown Court: poor quality or poorly edited ABE interviews, which judges believe may hinder the quality of a witness' evidence; and problems with technology, which may both upset disconcert witnesses and lessen the effectiveness of their evidence. It is concerning that most Witness Service respondents felt that the quality of video links in courts was adequate in *most* cases, rather than all. We know that HMCTS has put considerable effort and investment into

[35] See: https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/domestic-abuse-bill-2020-overarching-factsheet

technology and expertise during the pandemic but seek reassurance that the problems our survey showed in November would not reappear now.

***Recommendation 7**:* Ground Rules Hearings should be mandatory in every case involving vulnerable or intimidated witnesses as a final assurance that needs assessments have been adequate and special measures are provided. HMCTS should monitor the occurrence of Ground Rules Hearings across both the higher and lower court.

Our surveys suggest that Ground Rules Hearings are not held as often as they should be. They are essential for cases in which there is a Registered Intermediary but are of such value for setting an appropriate tone and controlling questioning in a fair way that they should become standard in other vulnerable witness cases and considered as best practice in cases with intimidated witnesses.

***Recommendation 8**:* The CPS must guarantee that a witness can speak – either in person or via live link – to the prosecuting barrister and can re-read their statement before giving evidence, irrespective of where they give evidence from.

Recommendation 9: Judges, magistrates, police and prosecutors should receive training on the empirical evidence of the effects of special measures on quality of evidence. Police and prosecutors should be trained not to prejudice witness choice of special measures.

We also heard concerning reports that witnesses giving evidence off-site might be less well prepared than they should be. For example, there were instances of witnesses not being able to read their witness statements before giving evidence and not meeting the prosecution barrister. For witnesses to give their best evidence, they need to be adequately prepared and there should be no logistical obstacles to refreshing their memory of their statement or speaking to the prosecution barrister, both essential prerequisites for the delivery of best evidence which must always be guaranteed.

The belief that a witness' evidence loses impact and perhaps even authenticity because they are not in the room may well be unfounded but if this is, as we understand, a myth, it needs to be busted as it seems to be widely held. If the current evidence base is not strong enough, more research may need to be carried out on this.

5. Special measures in court: are witnesses receiving the right measures? Could some special measures be used more often?

5.1 Introduction

The previous section examined how frequently special measures are used in the criminal courts, the quality of provision and their perceived effectiveness, when used.

In this section we consider whether there are any court-level barriers to victims receiving the right special measures for them. In our surveys and interviews with experts we also asked whether participants felt any measures were under-used or could be used more. In this section we also discuss the results of these questions and make suggestions for how the use of certain measures might be extended.

5.2 Pre-trial support, including pre-trial visits

A witness can be referred by the Witness Care Unit (WCU), a victim support service or self-refer for pre-trial support from the Witness Service, including the option of a pre-trial visit or a phone-call. The Witness Care Units, the CPS and the Witness Service all felt strongly that such pre-trial contact was invaluable in preparing a witness for what to expect on the day of trial, including giving them a full understanding of how their chosen special measures will work in the precise court they will appear in, since facilities and practice vary.

The perceived need for more referrals from WCUs was repeatedly voiced by Witness Service participants:

> *More pre-trial visits promoted, either by an in-person visit or via the phone. When they have participated in such witnesses concerns and worries are addressed and they feel less anxious. The majority of our witnesses have never been to Court at all and are basing what to expect on television programmes that regularly show aggressive questioning. When they are taken through the procedures by the volunteers and advised what to expect, you can see them physically relax somewhat. (Witness Service survey respondent)*

Such pre-trial contact may prompt a witness to realise they would prefer another special measure or a combination of measures. As one Witness Service manager told us:

> *Because if you're told about screens on the phone, if you're told about video link on the phone, how do you know it's the right one unless you practise it?*

However, if the witness' first real understanding of the special measure is on the day of trial, it becomes more difficult to change that measure and may create considerable uncertainty for the witness.

Encouragingly, 51% of Witness Service staff said that in their court(s), at the time of the survey, 'often' available. So even at most times during the Covid pandemic, pre-trial visits were usually available.[36]

[36] Respondents were asked In your court at present, are witnesses able to make pre-trial visits as usual in advance of the date they give evidence? in a section of the survey entitled, ' Experiences of witnesses in court after the resumption of jury trials.'

All three of the Witness Service staff we interviewed spoke of frustrations around the low number of referrals they received, and all three gave a very rough estimate of the proportion of witnesses they gave pre-trial support to in their respective areas: a quarter or less in each case. One felt the proportion of child witnesses referred in their area was at least as low if not lower than this, and they said they would like to see all child and vulnerable witnesses referred as a matter of course. It may be that this lack of preparation of some child witnesses lay behind this comment from a magistrate in our survey:

> *Child witnesses using a live link in any venue is only adequate. They appear like an animal caught in headlights and I don't think we get the best evidence from them. They need more advance support and guidance and to be supported during the trial by a person they know better than a social worker they may have only just met. Also, solicitors on both sides need better training on how to talk and question young witnesses - using appropriate language and tone of voice.*

5.3 Late or inadequate applications for special measures

Our interviews and surveys indicate the importance of timely and quality applications for special measures. There was a sense amongst some judges that they saw it as their role to query if a special measure is not available in the court or is not applied for. Others felt that this should not be HMCTS staff or a judges' responsibility but rather should be dealt with by the police and CPS at an earlier stage.

Magistrates and judges told us that they observe two main issues with applications: lack of information and last-minute applications. We heard of examples where special measures applications did not provide enough information, and the bench or court clerk then had to ask the CPS for more information. We were also told about the impact of late and poor-quality applications on court staff who found it difficult to accommodate these late requests. Judges and magistrates were not asked why they might not grant an application, but a couple said:

> *The most common reason is that no-one has asked for special measures […] When measures are applied for in good time, they are usually acceded to. (magistrate)*

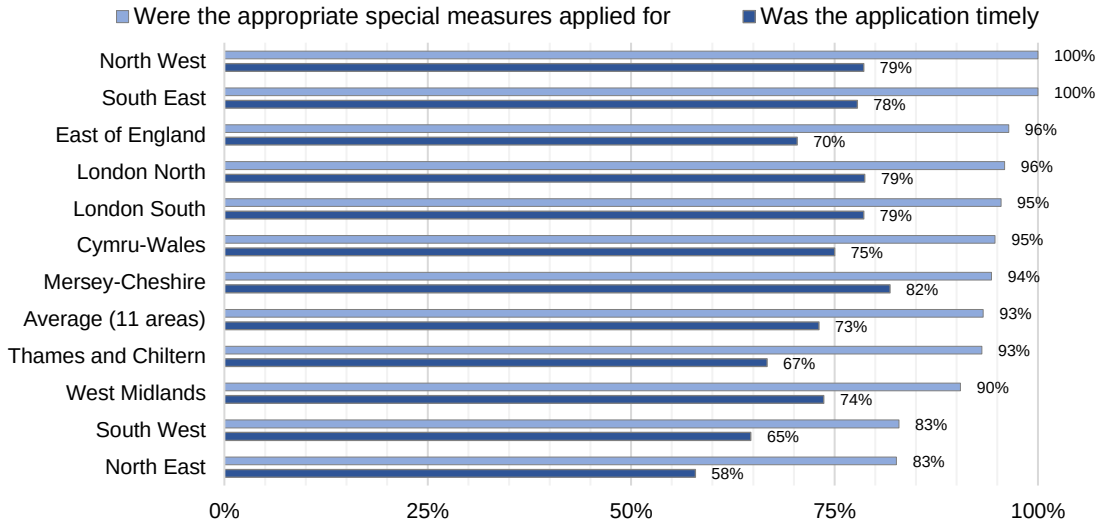
> *Most commonly it is down to a failure of prosecution authorities to alert court in advance. We have always "done our best" but sadly I remain unconvinced that on the day of trial (with pressures caused by over-listing in trials courts) "our best" is always good enough. (district judge).*

A Witness Care Unit interviewee similarly suggested that lateness may be a factor in a rejected application:

> *The later we put an application in the less likely we are get it granted or changed, ideally we want those applications going in for first hearing because we get met with, sometimes, some, not arguments, probably from defence as to why we didn't need them in the first place but now we need them*

Some of these observations are reflected in the findings of HMCPSI's inspection on special measures applications. Between 2016 and 2018, HMCPSI inspected 11/14 CPS Areas. After inspecting 389 case files, it found appropriate special measures were applied for in 93% of cases, and the application was timely in 73% of cases (See Figure 5.1).

Figure 5.1: HMCPSI Inspection findings on Special Measures (2017-2019): appropriateness and timeliness of applications for special measures
Source: CPS Areas and Headquarters Reports



Prosecutors told us that late applications can be refused by magistrates for being outside the legal timescales and prosecutors must apply for permission to apply out of time, although courts are generally willing to hear new applications. They said the reason for late applications tends to be the receipt of new information about a victim or witness. We also heard that cases in magistrates' courts can proceed quickly and vulnerabilities and intimidation might be missed:

> *I would say it's probably more difficult in the magistrates' court because things move very quickly […] we do have in the magistrates' court a lot of cases that are charged by the police so in a Crown Court case they would always generally be charged by a prosecutor, in the magistrates' courts, quite a percentage of cases can be charged by the police, so you're missing that opportunity at the pre-charge stage and it can go to a trial date. (CPS representative).*

5.4 Court cultures

There were also indications that judicial and organisational culture may play a role in the provision of special measures. Special measures are at the discretion of the judiciary and there was some suggestion that certain types of special measures were preferred (e.g. the preference for a witness to appear in person, discussed in Section Four). We found some judges were using ad hoc local measures to help witnesses. These judges told us about using alternative entrances, such as allowing vulnerable and intimidated witnesses to enter court through judge's entrance, cardboard taped to glass to prevent the defendants seeing the witness on the live-link screen, and defendants held on temporarily remand to allow a witness to leave the court.

Witness Service managers made similar observations at interview. One Witness Service manager described how one particular Resident Judge really 'gets' special measures and encouraged an 'ethos' of working hard to accommodate witness needs. Another noted that in one of her areas the WCU were forthcoming in applying for special measures and 'pushing for' special measures to be granted, whereas another area was more 'reluctant'. Both had rural catchment areas but in one area it was far more common and accepted for witnesses to give evidence remotely. Later in the interview she noted that the 'reluctant' area there were no arrangements in place for victims and witnesses to use a separate court entrance from

defendants, whereas in the other there was an agreement that the judges' entrance to the court building could be used for victims and witnesses. This suggests variable culture and practice in relation to special measures, perhaps introducing an element of postcode lottery.

5.5 Special measures which may be under-used

Across all our interviews and surveys, we asked if respondents noticed any gaps in provision: special measures or combination of measures that they felt are generally effective, but not applied for often enough in cases where they might be helpful.

A couple of measures were consistently mentioned across respondent groups: evidence in private (see Box 3, below) and Registered Intermediaries (see Section Four). Others mentioned remote evidence centres (see Section Five) and more use of s28 (see Section Six). Witness Service respondents also mentioned removal of wigs and gowns. One said:

> *This is usually granted for children, however, I am of the opinion that this could help numerous vulnerable adults to give their best evidence by removing some anxiety and fear.*

Box 3. Section 25 – Evidence given in private

Our surveys with the magistracy and judiciary indicated extremely low usage of the provision to exclude persons from the court during a witness' evidence, also known as Section 25.[37] All of the magistrates and district judges who felt able to comment said it was rarely or never used, and nearly all Crown Court judges (98%) said the same. In the interviews across our four areas, WCU and Witness Service staff often said they had never seen this measure applied for or used. One Witness Service survey respondent said: "*Clearing the public gallery is rarely, if ever, used. This is a measure available to vulnerable and intimidated witnesses just as much as any other but whenever a witness asks for it and gives reasonable concerns it doesn't even get applied for.*"

Representatives from the CPS and some judges acknowledged that this provision is underused and that it could be applied for more often, especially in youth cases. The rarity of its current use may be a disincentive to applying for it as a special measure: even the CPS guidance currently states that *'The public gallery can be cleared in very exceptional cases.'* [38] We were told about some recent awareness raising and about the requirements to request Section 25, namely evidence of intimidation.

Comments in our survey of rape survivors also emphasised how intimidating survivors often found the public gallery:

The experience was traumatising. I could see the public gallery and the friends of the perpetrator glared at me whilst I provided my evidence.

And, from another:

I felt the screen was appropriate for me but would have preferred the public gallery to have been empty when my video interview was shown and I was cross examined as the details of my abuse was for all to see by those in the public gallery.

[37] 25. *(1) A special measures direction may provide for the exclusion from the court, during the giving of the witness' evidence, of persons of any description specified in the direction.*
(2) The persons who may be so excluded do not include— (a) the accused, (b) legal representatives acting in the proceedings, or (c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness. Available at: https://www.legislation.gov.uk/ukpga/1999/23/section/25
[38] See: https://www.cps.gov.uk/legal-guidance/special-measures

5.6 Conclusion and recommendations

This section presented some issues which might hinder the delivery of the right special measures for each witness in court, cited across our surveys and interviews. There is room for improvement in each area.

Recommendation 10: There is a need for more referrals and for referrals to be made earlier to the Witness Service. A pilot inter-agency exercise could identify strategies for improvement which could be disseminated nationally.

Recommendation 11: HMCTS and the Witness Service should agree a national protocol to ensure that vulnerable witnesses (including children) are enabled to access practice sessions with their special measure of choice.

Despite the benefits pre-trial visits, we were told repeatedly that only a minority of witnesses had them. Plotnikoff and Woolfson (2019) identified this problem in relation to young witnesses and we repeat two recommendations made by these authors, in relation to all witnesses.

Recommendation 12: There should be no time limits to special measures applications.[39]

The quality and timeliness of applications can cause issues with securing and delivering special measures. We would hope that streamlining the application process might improve this, but some late applications may be inevitable. We would like to ensure that they will be given due consideration by the court.

Recommendation 13: The Ministry of Justice should introduce a statutory requirement for police and prosecutors to demonstrate that the involvement of a Registered Intermediary was actively considered in every case involving children under the age of 18, with reasons given in cases where it was not considered to be appropriate.

Recommendation 14: In its guidance to prosecutors on closing the public gallery, the CPS should remove references to 'exceptional' cases. MoJ should engage with the judiciary to promote use of this as a special measure during the evidence of a vulnerable or intimidated witness.

Closure of the public gallery and the appointment of Registered Intermediaries were the two themes that emerged when we asked about under-used special measures. We repeat a recommendation made in the Commissioner's recently published policy paper on the Victims' Law: the appointment of a Registered Intermediary should be considered for all child witnesses.[40]

Our review is not the first to identify closure of the public gallery as a potentially underused measure that could make a positive difference to the experiences of vulnerable and intimidated witnesses in court: The CPS has spoken about widening the use of closing the public gallery recently, in relation to sexual offences, which can include intimate details of victims' personal lives.[41] We endorse this and make recommendation 14 as a first step.

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[39] Criminal Procedure Rules 18.3: "*A party who wants the court to exercise its power to give or make a direction or order must— (a) apply in writing as soon as reasonably practicable, and in any event not more than— (i) 20 business days after the defendant pleads not guilty, in a magistrates' court, or (ii) 10 business days after the defendant pleads not guilty, in the Crown Court; and (b) serve the application on— (i) the court officer, and (ii) each other party.* See Criminal Procedure Rules and Practice Directions 2020, Part 18. Available at: https://www.gov.uk/guidance/rules-and-practice-directions-2020

[40] See Victims' Commissioner (2021): Victims Law Policy Paper, Recommendation 34: https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2021/02/VC-Victims-Law-policy-paper_FINAL-1.pdf

[41] Daily Mail, 15 February 2020. See: https://www.dailymail.co.uk/news/article-9260487/Rape-victims-asked-want-evidence-closed-courtroom.html

6. Special measures during Covid-19

6.1 Introduction

Covid-19 has placed the court system under unprecedented pressures. In our surveys and interviews we asked about provision of special measures and changes to courts under Covid arrangements, as well as asking about business as usual. The findings relating to Covid span the resumption of jury trials in May 2020 to the timing of the surveys, November 2020. We were told about efforts made by HMCTS and Witness Service staff, judges, and other criminal justice professionals to provide special measures since the resumption of trials. There seemed to be encouraging evidence that victims and witnesses were being provided special measures under difficult circumstances, new health and safety and social distancing requirements. We heard that the increased use of video evidence was bringing about an improved understanding and availability of video links, and a welcome further roll-out of Section 28 provision in courts.

A few of the staff we spoke to said there had been an upside to Covid: several spoke of being invited to meetings for the first time, and also a renewed spirit of working together across agencies to sort problems in the system out.

However, we also found evidence of some worrying gaps in provision: difficulties with providing screens, meaning that witnesses expecting these have had to use live link instead; poor information provision to witnesses in court; and problems with live links, most notably the inability to screen the live link screen so the defendant cannot see the witness give evidence.

6.2 How well have court buildings adapted during Covid-19 measures?

Court facilities have had to be adapted for Covid-19 health and safety measures, through social distancing, physical modification of courtrooms, cleaning of public spaces and the installation of plexiglass. Courts must provide safe environments for victims and witnesses, helping them to feel comfortable about attending trials to give evidence.

We heard variable reports about how well courts have adapted to Covid safety requirements, for example, one magistrate noted how HMCTS has worked “tirelessly to ensure the courthouse is Covid compliant”. However, other respondents told us there had been no changes at all and one judge said the building was simply covered in hazard tape and signs.

Judges and magistrates were asked how well facilities in court buildings had accommodated the needs of vulnerable and intimidated witnesses under Covid, and about well they did this under business as usual.[42] Waiting areas, entrances and exits and witness rooms were all rated in this way. Interestingly, there was little difference in the ratings of these areas under Covid, compared to business as usual: For example, just 17% of magistrates and district judges rated waiting areas as accommodating the needs of vulnerable and intimidated witnesses well or very well during Covid and 21% said this about business as usual.[43] This suggests that judges and magistrates did not perceive Covid as exacerbating shortcomings with the court estate.

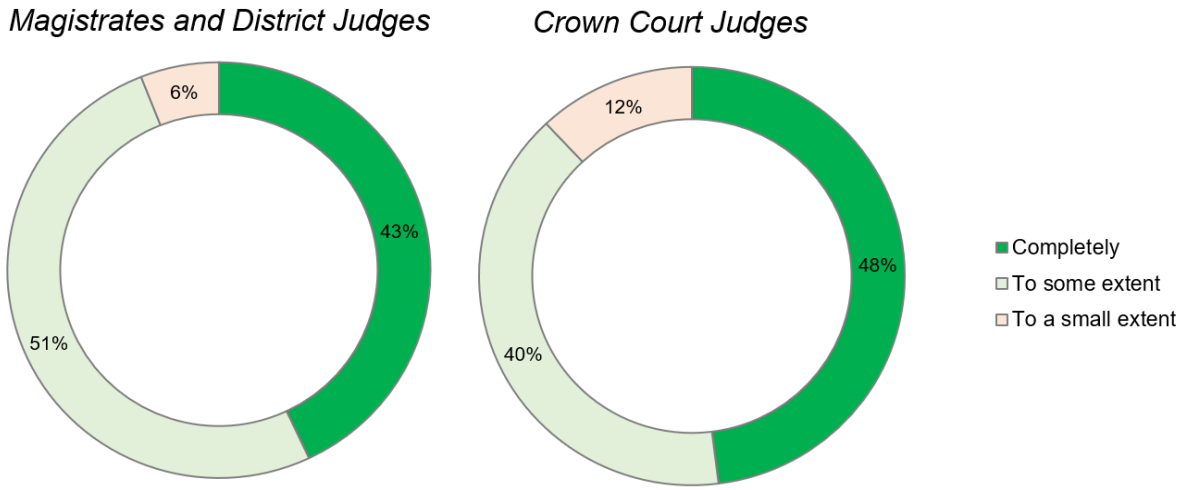
However, just under a quarter (24%) of Witness Service staff felt it was more difficult to separate prosecution witnesses from defendants and their supporters in waiting areas due to Covid-19 related health and safety measures – where 67% reported no change.

[42] We split our samples according to those who had presided over trials during the Covid pandemic, and those who had, not (for district judges and magistrates our cut off point was any trials during Covid, for Crown Court judges more than three). So, the sample of respondents who answered questions about court arrangements under Covid was different to the sample who answered them about business as usual.
[43] These figures exclude respondents who could not say.

6.3 How well are courts looking after vulnerable and intimidated witnesses and providing special measures under Covid?

We asked magistrates and Crown Court judges to tell us the extent to which they agreed that the needs of vulnerable and intimidated witnesses are being adequately met in trials during Covid. In magistrates' courts, 43% said these needs were completely met, 51% said to some extent, 6% to a small extent. In Crown Courts, 48% said these needs were completely met, 40% said to some extent, 12% to a small extent (see Figure 6.1).

Figure 6.1: From your recent observations, to what extend would you say the needs of vulnerable and intimidated witnesses are being adequately met in trials taking place under Covid arrangements?

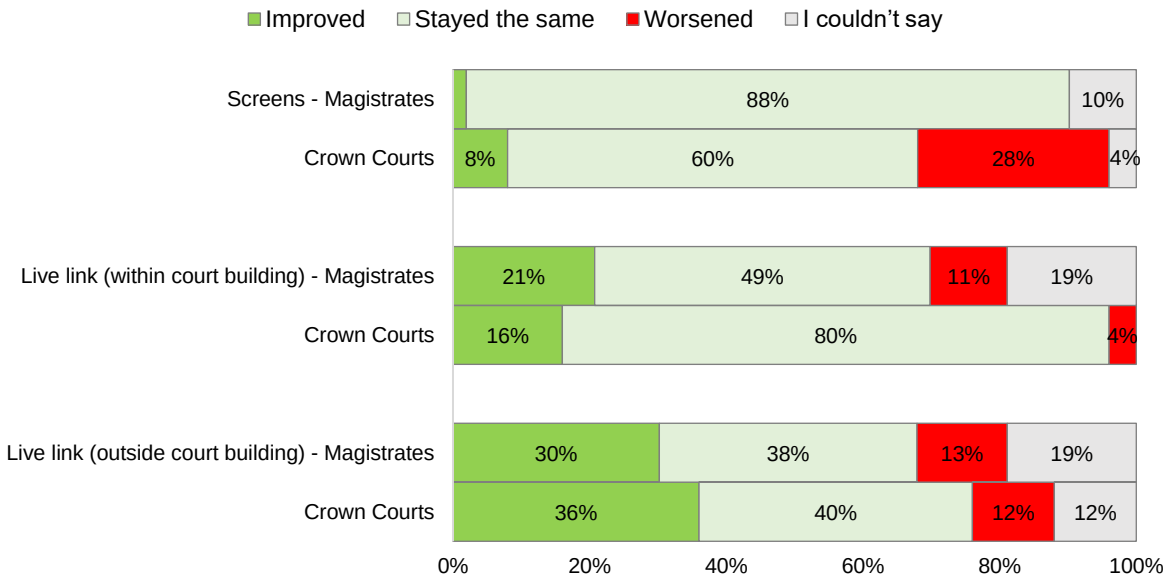


Number of respondents = 51 (Magistrates and District Judges) and 25 (Crown Court Judges)

However, asked a similar question, the Witness Service took a different view: just 9% of staff felt vulnerable and intimidated witnesses' needs were completely met in trials taking place under Covid and 47% felt they were met to a great extent, leaving around 44% who felt that witnesses' needs were being met only to a moderate extent or less. Respondents were asked to explain their answer and the key reason given was lack of communication with witnesses before the trial around both special measures and more generally, around scheduling of court appearances. This is interesting because it is an aspect of the process Witness Service employees and volunteers, who observe witnesses before and after the trial as well as during it, are well placed to see. Judges and magistrates, by contrast, are likely to be unaware of this aspect of the witnesses' experience in court. In this vein, 74% of Witness Service respondents felt that public access to trials had worsened during Covid, and several how negatively this may impact witnesses, who sometimes were unable to have their supporters in court or in the public gallery because of the stringent restrictions on numbers.

We asked judges about the impact of Covid-19 on the court's, or court staff's, ability to provide any special measures. As Figure 6.2 shows, the strongest area of perceived improvement has been live links (outside the court building) in both magistrates' and Crown Courts – 30% of magistrates and district judges, and 36% of Crown Court judges, saying they had improved. However, the use of screens in Crown Courts was perceived as worsening more than any other special measure – with 28% of judges saying the court's, and court staff's ability to provide screens had worsened under Covid arrangements. There was relatively little change across other special measures.

Figure 6.2: Special measures under Covid arrangements *(See footnote 44)*



(range of n. respondents Magistrates/District Judges = 51 to 53; n. respondents Crown Court = 25)[44]

Box 4. Section 28

One positive development resulting from Covid has been the expedited rollout of and increased take-up of Section 28. This provision allows vulnerable witnesses have both their evidence in chief and cross examination pre-recorded. The video recordings are then their evidence, captured while their memory is fresh and they do not need to testify at trial. This frees them from anxious waiting and allows them to take therapy, if they wish, without any concerns that notes might be accessed in the trial. The rollout of s28 to vulnerable victims and witnesses was completed across 83 Crown Courts on 23 November 2020.

The measure was first piloted for vulnerable witnesses in 2016 and a number of benefits were found in its evaluation.[45] Firstly, most practitioners attending s28 hearing felt that witnesses' trauma was reduced. Secondly, monitoring data suggested witnesses who accessed s28 had shorter cross examinations than those who only had their evidence in chief pre-recorded and then waited for the trial to commence (who acted as a kind of comparator control group). Thirdly, fewer trials were cracked (not concluded). Fourthly, the guilty plea rate prior to trial was notably higher in s28 cases. Lastly there was little difference in the rate of conviction between the two groups of cases.

As we understand it, s28 is currently being piloted for intimidated witnesses in three early adopter courts – Leeds, Liverpool and Kingston upon Thames. This feels welcome: several of our experts cited the s28 rollout as key change for the better, encouraged by Covid.

[44] There was a slightly different question across the two surveys: For Magistrates/District Judges, we asked *Overall, has the provision of any of these special measures changed under Covid arrangements?* For Crown Court Judges, the question was: *Overall, has the court's/court staff's ability to provide any of these special measures changed under Covid arrangements?*

[45] See: MoJ (2016) Process evaluation of pre-recorded cross-examination pilot (Section 28) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553335/process-evaluation-doc.pdf

Box 4 (Continued)

Crown Court judges also rated this measure as highly effective in our survey: although 40% rated this measure as effective in lessening witness anxiety, a majority (55%) said they couldn't say. If we exclude the 55% on the grounds that this suggests they had not presided over such a trial, almost all our judges who felt able to make a judgement believed the measure effective in reducing witness anxiety and most saw it as effective in enabling best evidence. Several judges also spontaneously commented that s28 has been a good innovation for vulnerable victims – and one or two also said that more cases could be being identified for this measure.

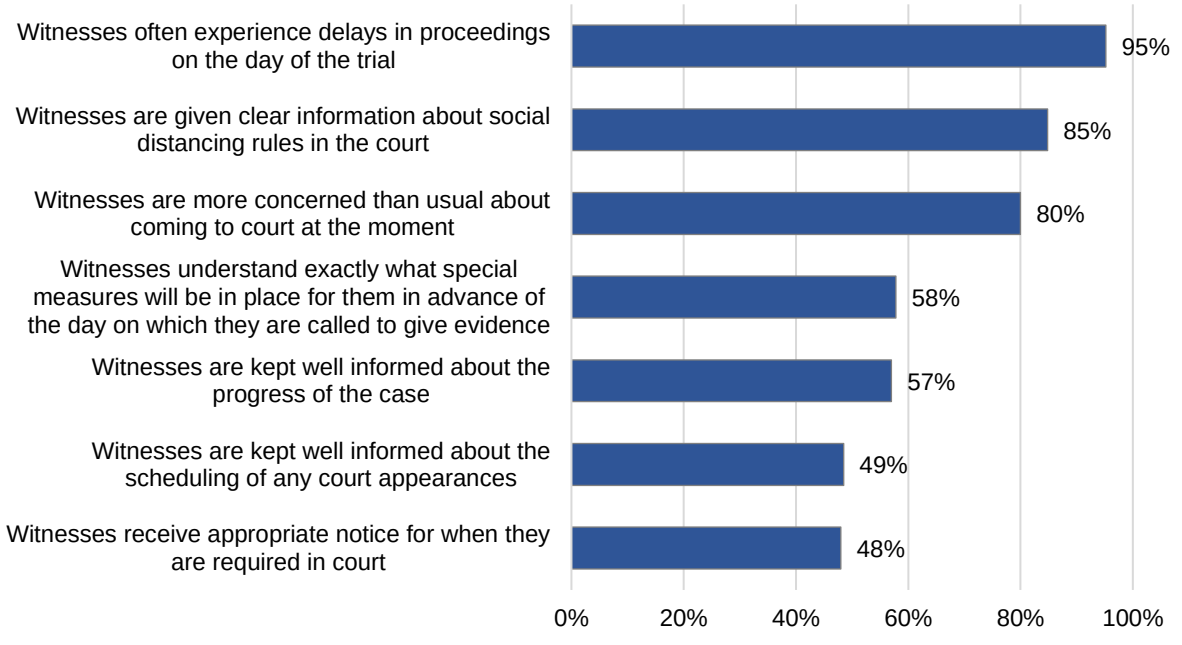
Despite important innovations such as the rollout of s28 and greater use of audio-visual technology, we found a few issues of concern specifically relating to court arrangements during the period, discussed below.

6.4 Providing information and support to victims and witnesses

As mentioned above, we found concerning evidence of issues in how criminal justice professionals were providing adequate, timely information during the pandemic. As Figure 6.3 (below) shows, our survey with the Witness Service found 80% of respondents agreed that witnesses are currently more anxious about coming to court. However, at a time of heightened anxiety communication seemed to have suffered: only just under half agreed that witnesses were kept well informed of the scheduling of any court appearances (49%) or felt witnesses were given enough notice for court appearances (48%).

Our case study interviews highlighted that victims may not know what special measures have been applied for in advance of turning up at court. In line with this, only 15% of Witness Service respondents 'strongly agreed' with the statement 'Witnesses understand exactly what special measures will be in place for them in advance of the day on which they are called to give evidence' with a further 43% saying they 'tend to agree' and 30% answering 'tend to disagree'. This is likely to have been more acute during the pandemic, but nevertheless feels unsatisfactory.

Figure 6.3: Proportion of Witness Service staff who agreed or strongly agreed with these statements (excluding don't knows)



(Number of respondents = 95-105, varying by response)

Witness Service staff were asked whether witnesses are able to speak with the Witness Service by phone before the day of trial, to be talked through the experience of attending court (in lieu of an in-person visit to court). Encouragingly, 91% of respondents said that the option of a phone call in lieu of a pre-trial visit was always (84%) or often (8%) available to witnesses. We do not know about take up of this service or about how much phone support the service usually gives, but it may be that talking a witness through the specifics of their special measures and/or perhaps offering an online tour of the court might help address the low use of pre-trial visits, discussed in Section Five.

We heard from Witness Service managers and Crown Court judges about the reduced operation of this service during Covid. Witness Service managers in our four areas told us about staffing issues and decreased rates of volunteering during Covid-19. Managers told us they were starting recruitment drives to increase the number of volunteers. One manager told us about the practical difficulties of having enough volunteer staff on hand when only a certain number of staff and volunteers can be in court buildings due to social distancing.

6.5 Reduced use of screens and not being able to screen the video screen

Since the reopening of courts, a key problem with providing special measures had been an inability to use screens in courtrooms. Given that screens were perceived by judges and magistrates to be the most effective special measure at both relieving anxiety and eliciting best evidence (see Section Three), this feels concerning. The difficulties were mainly due to necessary changes in court layout because of the need to spread jurors around the courtroom to enable social distancing. Judges also told us how the physical layout of buildings was a major barrier for some courtrooms. One judge said that the installation of plexiglass had reduced the effectiveness of screens:

> *There is a problem with the COVID Perspex screens on the bar table and in the jury area - these can reflect images and so care needs to be taken to ensure, e.g. that a screened complainant/witness cannot be seen reflected by the Defendant, and vice versa.*

Witness Service staff reported that, in several court buildings, some courtrooms did not have screens. Temporary screens were available in some courts but were reportedly difficult to move between courtrooms. A notable proportion of Witness Service respondents said that screens had not been available in their court(s) since the pandemic (by screening the witness from the defendant, a screen would obstruct the view of the jury). This ties in with the view of the 28% of judges that the provision of screens had worsened during Covid (see Figure 6.2, above). One Witness Service staff member told us these changes have had significant impact on vulnerable witnesses:

> *The biggest impact is where there is no longer the option for a vulnerable witness to have screens. This has been horrendous for the witnesses and will have lasting impact on the mental wellbeing of some witnesses who were told to go into court with no special measures even though they had screens agreed pre-Covid. We have had one witness who felt so compelled she wrote an impact letter explaining how not having screens available affected her. Many vulnerable witnesses opt for screens over video link through fear of the defendant seeing their faces. To have this taken away from them really has been devastating for some.*

A Witness Service manager in one of our four areas told us how Covid had limited the choice of special measures. At the start of the pandemic, some witnesses were not called into the courtroom to give evidence, so witnesses were not given the option of screens. Regardless of

whether screens were applied for, witnesses were giving evidence from another court or a video link room. But live link is not always the best option for the witness. In particular, witnesses are uncomfortable having their screened image visible to the defendant. Comments in our Witness Service survey also hinted at persuasion and lack of real choice: one respondent talked of witnesses being 'convinced' to use the live link instead of screens, another of the 'imposition' of live link when screens were previously granted. Another Witness Service interviewee told us that in one courthouse, screens are only to be used in exceptional circumstances. She said:

> *When I've raised with HMCTS that actually a witness being granted special measures should be an exceptional circumstance, I've been told no, we should be giving them TV link and it's only if somebody refuses TV link they should have screens.*

Despite the possibility of the CPS applying to have the screens selectively screened as a dual special measure, we heard from WCU and Witness Service staff that this hardly ever occurred (both during Covid and under business as usual) as it was often not practicable due to the positioning of screen in court and other factors. When a switch to live-link was made late due to Covid, this issue might not be communicated to witnesses ahead of the trial, leading to significant distress and/or the need to delay the trial to rectify the issue.

6.6 Problems with live links

We heard that video links were being increasingly used as the default special measure and how the provision of video links was generally improving under Covid and perhaps because of it. Live links and improvements to the technology underpinning them can be seen as something of a success story for HMCTS during Covid: In particular, around a third of judges and magistrates said that live links outside the court building had improved.

However, as courts increased their use of video links for victims and witnesses, there were several practical issues with using the technology proficiently. These concerned the availability of digital support officers, as well as poor sound, video quality, internet connections, placement of screens, and witnesses who did not have access to technology. These issues can lead to distressing experiences for witnesses. We raised this as a real concern ahead of this report with HMCTS and were reassured that since our survey there was a digital support officer in every court and increasing overall proficiency with and performance of the technology.

6.7 Conclusion and recommendations

This section presented a mixed picture of the provision of special measures since the resumption of jury trials. We found evidence of courts adapting to Covid safety requirements, though some concerns, particularly around communication to witnesses at that time.

Concerningly, the research found relatively few Witness Service staff thought witnesses understood exactly what special measures would be in place for them in advance of the day when they would give their evidence. There was a slight sense that witnesses were being given a live link without real choice, at a time when witnesses were particularly anxious about coming to court.

Recommendation 15: Screening the live-link video screen from the defendant should be expressly offered to every vulnerable/intimidated witness and consideration given in every such case to any argument to screen it from the public gallery too.

Witness Care Units in our case study areas were careful to ensure that witnesses knew they would be seen over live link, but Witness Service respondents to our questionnaire suggested many were still coming to court under the misapprehension that the defendant would not be able to see them. CPS guidance that a 'combination of special measures' can be requested

has led to few applications for this 'combination'. We understand that HMCTS is aiming to secure funding that would ensure that at least one screen in every criminal court building can be screened. This would increase the opportunity for vulnerable or intimidated witnesses who want or need to give evidence via video-link to do so without being seen by the defendant. Alongside this, the CPS has committed to sharing information about the screening process both with their own staff and all those involved with the hearing to further increase awareness that these dual special measures are available to take up.

Recommendation 16: HMCTS introduces s28 for intimidated as well as vulnerable witnesses across Crown Courts as soon as practically possibly. In due course, consideration should be given to offering it more widely, especially when trial dates are a long time in the future.

Section 28 seems ideally placed to save the most vulnerable and intimidated witnesses waiting an unacceptably long time to give evidence, with attendant worries for their mental health and powers of recall. In due course consideration might be given to widening its use to encompassing all witnesses who are expecting to wait a very long period for trial.

On the basis that Covid restrictions are temporary, we have not made any other recommendations from these findings. Nonetheless, we think they merit further consideration by government agencies because some of these findings suggest some trade-off between the resumption of jury trials and providing vulnerable and intimidated witnesses with information, support and special measures. These needs of victims and witnesses should be at the centre of all planning for Covid-safe courtrooms and trials.

7. Wider experience of victims and witnesses in court

7.1 Introduction

Our discussions with staff in our four areas highlighted that special measures are only part of the wider context of coming to court to give evidence. This penultimate section summarises observations from staff on how the wider court experience can affect victims and witnesses and makes recommendations as to how the overall experience might be improved.

7.2 The experience of coming to court

In their accounts, some of the Witness Service and WCU interviewees described the requirements of being asked to attend court, making the journey, entering the court building and entering the courtroom through the witness' eyes. The picture they presented was daunting.

One Witness Service interviewee described vividly how witnesses at one of her courts had to walk through "a long, narrow, courtyard into that court building" via the main public entrance. This might be immediately after getting off the same bus or train as the defendant coming to court, because the area is rural and public transport limited (the same point about sharing public transport with the defendant was noted by another Witness Service interviewee in a different area). She had done some training with WCU staff to help them understand exactly what each court offered:

> *I took them on a walkthrough of that section, in the shoes of what would be a vulnerable victim or witness coming into court and was saying at each stage, how would you feel at this point? They all were in agreement that would be a huge barrier.*

Noting how in this court she had been told that witnesses could not use the alternative entrance for staff and judges (in contrast to another court in her patch), she concluded, "In our day and age, I don't know if that's the way that victims and witnesses are [should be] treated." A WCU interviewee emphasised how the 'good' of special measures could be undermined or negated by the experience outside the courtroom, saying (in relation to a case study we presented), "There's no point having special measures if they're walking in the front entrance".

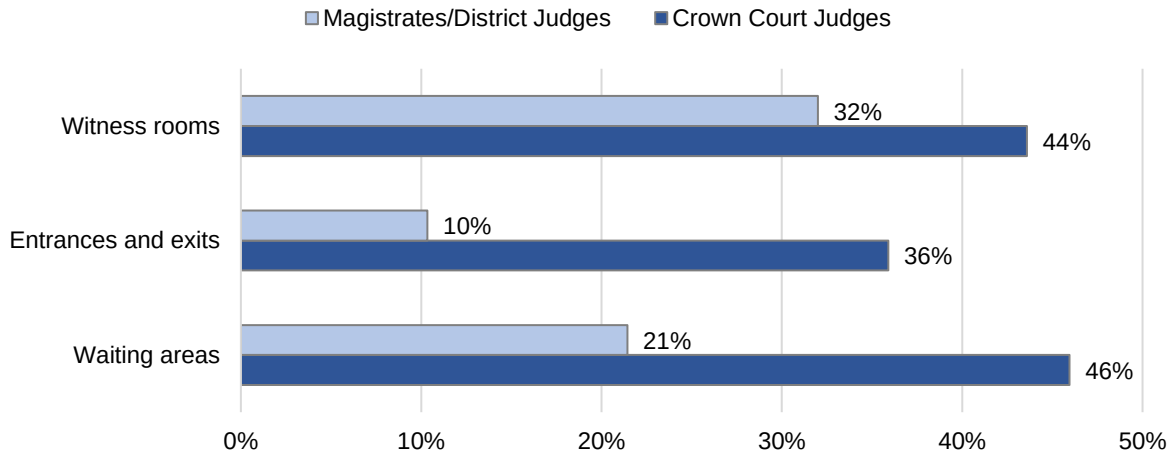
7.3 Court facilities

We found mixed perceptions about how court buildings accommodate the needs of vulnerable and intimidated witnesses, with Witness Service staff generally more positive about court facilities than the judiciary and magistracy.

As Figure 7.1 shows, judges and magistrates held a generally negative perception about how courts' witness rooms, entrances and exits, and waiting areas, accommodated the needs of vulnerable and intimidated witnesses. Entrances and exits emerged as an area of concern: these had the lowest ratings across all groups, with just 10% of magistrates' court respondents and 36% of Crown Court judges rating these as good.[46] Open text responses indicated a general need for modernisation of court buildings, in terms of physical layout, infrastructure and the use of technology.

[46] Note the magistrates sample size was particularly low for this question (n = 29) because a high proportion of magistrates answered 'I couldn't say'.

Figure 7.1: In your opinion, how good are the wider facilities in the court building (your court building of the one you sit in most often) at accommodating the needs of vulnerable and intimidated witnesses? Proportion who said 'good' or 'very good'



(Number of respondents = 25-39, varying by response; excluding 'I couldn't say)

Generally, responses were positive amongst Witness Service staff, with most saying that key areas were 'very' or 'quite' good at accommodating the needs of vulnerable victims and witnesses under business as usual. For example, 97% of respondents said that in 'all' or 'most' cases witnesses could be seated in an area separate from the suspect and their family and friends, and 76% of respondents said that in 'all' or 'most' cases witnesses could currently use a separate entrance to the main public entrance to the court building when attending court.

However, we heard from staff at several different courts that separate entrances typically used for vulnerable and intimidated witnesses did not include disabled access. Similarly, issues were reported with access to facilities such as lifts, accessible waiting rooms, and disabled toilets, which sometimes meant disabled witnesses had to move around the building risking contact with the defendant and their supporters to access these.

7.4 Listings and help getting to court

One of the WCU staff we spoke to felt that witnesses were given far too little consideration in relation to listings. One benefit of Covid for her was that she was now invited to listings meetings in the magistrates' court and was able for the first time to add witnesses' needs into the mix. For example, she might object to a listing being changed at less than a week's notice, because a witness was travelling from Scotland. But up until a few months ago, decisions would have been taken without the witnesses' needs being taken account of at all. She noted:

> *There's no concept of where they're travelling from, whether they're vulnerable, whether they're desperate to give their evidence in order to get it out of the way on with their lives - it's all to do with does this fit into our listings, is the defendant represented. And that's so wrong.*

We also heard about double listings under Covid which, in the words of one Witness Service respondent, 'have a detrimental effect on witnesses.' This is the practice of listing two or more trials in one court for a given day in case the earlier trial does not go ahead, usually because the defendant pleads guilty on the day of trial. The inconvenience for the witnesses is that if there is no guilty plea and the first trial goes ahead, witnesses at the second listed trial will be stood down on the day. The staff member above described how at that time, she and her staff were regularly seeing this standing down of witnesses to very serious offences, like rape and historical sex abuse cases, and how devastating this was for victims.

Witness Service and WCU staff also described the wider support needs of witnesses with disabilities or childcare needs, who may need financial help to get to court or for childcare or loss of earnings, which, in the face of budget cuts, they were less able to give. They spoke of victims and witnesses who had difficult and sometimes chaotic lives and the multiple barriers of getting them to court, including factors like not having a bus fare or a bank account, which may not sound insurmountable but sometimes are.

In this context, the prospect of not having to come to court at all, particularly during Covid, seems appealing. Jury trials run entirely remotely have been piloted and some witnesses are being allowed to give evidence from home. There are concerns over the safety and security of witnesses giving evidence in this way, particularly in the case of offences where there is a domestic abuse flag.

7.5 Remote evidence centres

The use of remote evidence centres (RECs) also removes the need for a witness to attend court at all, if they choose – and has the advantage of offering a controlled, formal environment to give evidence, without the intimidation of the court. The use of live link from outside of court (which would include RECs, but may also include giving evidence from other courts during Covid) seemed to be fairly limited in both the magistrates' and Crown Courts at the time of our surveys (see Figure 4.4), with just 15% of Crown Court judges saying these were used 'always or almost always' or 'often'.

In May 2020, the Office of the Victims' Commissioner undertook an audit of remote evidence centres, finding that 45% of Police and Crime Commissioners have a remote evidence centre (with only 8 PCCs having more than one centre in their area).[47] We understand that most of these centres are being used infrequently. One of the WCU staff in our case study areas noted that take up of RECs was low and had done some work to try to find out the reason for this. They said the key reason was the issue we heard about repeatedly throughout this research: even in a non-court location, witnesses were put off live links by the prospect of being seen and would reluctantly choose screens in court instead.

7.6 Conclusion and recommendations

Special measures are just one element of how a witness' court appearance can be facilitated and the anxieties associated with a court appearance lessened: Good communication, sympathetic listing which takes witnesses' needs into account, and concessions to a witness' desire to be kept away from defendants and their supporters throughout the court appearance all play a significant role.

We noted in Section Five how court culture plays a role in delivering special measures and setting the tone for the wider treatment of witnesses in court. Against this backdrop, we make two recommendations, the first relating to listings, the second to entrances and exits:

Recommendation 17: HMCTS should set out a protocol re-iterating the importance of witness needs in listings and including a mechanism for input on the victims' perspective on potential changes to listings. It should include the requirement that trials including vulnerable and intimidated witnesses are not 'double listed' (scheduled as a backup for another case in the same court).

Recommendation 18: HMCTS must ensure that a separate entrance to the court building is available to all vulnerable or intimidated witnesses. If the only alternative entrance is the judicial or staff one, it must gain any agreement necessary from the judiciary. The alternative entrance must be suitable for disabled witnesses to use.

[47] The OVC received information about remote evidence centres from 38 of 40 PCCs.

8. Data on vulnerability, intimidation and special measures

8.1 Introduction

In order to understand the provision of special measures to vulnerable and intimidated witnesses, we need data. Based on evidence gathered for this review, we are, unfortunately, confident that a proportion of vulnerable and intimidated witnesses do not receive appropriate special measures. However, this review has found limited national-level data about the provision of special measures to further analyse unmet needs.

8.2 Data on special measures provision

One of the main aims of this review was to identify whether there was an unmet need for special measures. Previous chapters have examined some of the systemic issues with delivering special measures, many of which may lead to unmet needs. But we have only been able to estimate and gather partial evidence about current provision. Our surveys with judges and magistrates found a sizeable proportion of respondents thought that needs assessments are not always appropriate and there is an underuse of some special measures. However, our overarching question about unmet needs cannot be fully answered.

Remarkably, we found there was no overarching system for recording information about victims and witnesses' eligibility and applications for special measures. We found the police, CPS, Witness Service and courts, each operate systems that records limited information about victims and witnesses or special measures. To illustrate the paucity of available data, while the CPS data for 2019-20 shows the defendant's gender is unknown in 1% of completed prosecutions, the gender of 7% of complainants in domestic abuse cases was unknown, 16% in rape flagged cases, and 14% in child abuse flagged cases.[48]

Beyond knowing basic demographic information about complainants, we found representatives from the police, CPS and HMCTS were unable to access comprehensive datasets on the provision of special measures. Furthermore, discussions with the CPS indicate there was no available method for comprehensively identifying the number of vulnerable and intimidated witnesses involved in active cases in the criminal justice system. We heard about planned improvements to HMCTS data on special measures with the Common Platform, namely using pre-defined lists to record special measures usage. But, currently, data is not available in an analysable format for measures other than Section 28 hearings. The Citizens Advice Witness Service records witnesses' needs and special measure provision at a national level, but this data does not include all witnesses and cannot measure unmet need. The National Crime Agency were able to provide data on Registered Intermediaries. As an interviewee from the NCA said, the lack of basic data about 'demand' was a major barrier to effective policymaking.

> *If the country was to make a policy that was to say that every child 11 years and under gets an intermediary, one of the things that the country would struggle with right away is the country can't tell you what that demand looks like. The justice system doesn't know how many 11-year olds and under are witnesses or victims of crime and of those how many subsequently go to court. If you want to implement such change the most*

[48] CPS Prosecutions Quarterly Reports - Defendant Demographics Year Ending March 2020. Table 1.1. England & Wales - CPS Prosecutions by Gender; Table AR14. Violence against Women & Girls Prosecutions - Complainant Gender.

important thing is to build the infrastructure to meet the demand first, and build your cadre of [Registered Intermediaries] with the right skills in the right places.

Despite assurances from agencies that most victims receive appropriate special measures, the scarcity of supportive data and evidence does not provide reassurance. Also, stakeholders we interviewed were not able to provide robust data on whether special measures had improved or not over the previous five years. Although we were able to gather some evidence to indicate unmet needs in providing special measures, our findings raise two main issues related to their provision, discussed below.

8.3 Monitoring compliance with the Victims' Code

A full assessment of agencies' Victims' Code compliance requires significant improvements in national-level data capture. Criminal justice agencies were unable to provide national-level data on special measures provision, or even the number of vulnerable and intimidated witnesses involved in ongoing cases. Our case study interviews with police forces found some limited monitoring of special measures and victim vulnerability. Our interviews suggest there are issues with the functionality of management systems that do not provide options to record (or 'flag') vulnerability or special measures; limited accessibility of data on special measures in an analysable format; concerns about the quality of recorded data; and, limited reporting capabilities on data systems.

A couple of forces commented on the role of Local Criminal Justice Boards in identifying and addressing local barriers. Some Boards seem to be effectively using data for accountability, performance management, and monitoring special measures provision. One force told us they review special measures provisions for certain types of case, namely RASSO, domestic abuse cases with an anticipated plea of not guilty, and any other case with an anticipated not guilty plea.

Box 5. Good practice in monitoring victim vulnerability and special measures

We heard examples of good practice in police recording of special measures and vulnerability. One case study area (Area 4) told us about improvements to the provision of special measures over the last 18 months. This required developing IT systems to enable the recording of special measures.

This force told us that when a crime is recorded, staff are required to complete a victim needs assessment. This information is passed to a corporate development department which conducts further monitoring, including monitoring volumes of completed assessments and assessments completed in a two-day period. Further quality assurance checks include dip sampling assessments and feedback processes to improve officer's assessment capabilities. There are monthly checks and reports to a strategic management board, based on the above data. Impressively, this force can track their improvement with supportive data from early 2018.

Other forces also told us about case management systems and databases having vulnerability flags, options to record information about whether special measures were granted, and a RAG rating system to identify the vulnerability of victims. Another force (Area 2) told us about conducting case file quality reviews and inter-agency case progression meetings to review cases, which includes discussion of special measures in cases that have trial dates in the following three weeks.

8.4 Demographic information and equalities

There is critical need for criminal justice agencies to improve data capture in relation to special measures to actively prevent direct and indirect discrimination.

Although we found evidence of unmet needs, we were not able to determine whether those were disparities across victims and witnesses based on their protected characteristics. A representative from Survivors UK told us some populations, e.g. BAME, trans and male victims, are disproportionately not asking for help, and there is a need to do extra to advise these groups they can ask for special measures to give their best evidence. We found no evidence to suggest criminal justice agencies were regularly undertaking research or analysis on direct or indirect discrimination in special measures provision. As a representative from the police told us:

> *Demographic data is lacking and within policing things are recorded in lots of different ways even though there's the agreed different ethnicity codes [ ] also LGBT and other types of demographic data isn't always well-recorded, so then it's difficult to map the issues facing the different communities basically.*

As stated in Section Three, a study of vulnerability needs assessments (Burton, Evans and Sanders, 2006) found a significant gap between the 24% of witnesses who, on a conservative estimate, were likely to be vulnerable or intimidated and the official estimate of those who had actually been identified, at 7-10%. Nearly 20 years later, we are unable to say with confidence whether such a gap is uniformly experienced by different groups of victims and witnesses or whether it is linked to protected characteristics. Nor can we be assured that needs assessments do not include biases or discrimination.

8.5 Conclusion and recommendations

Reflecting our call elsewhere for improvements in national data collection about victims, this review found further evidence to support that call. We found significant gaps in data collection, monitoring and understanding of the 'demand and supply' of special measures, what proportion of vulnerable and intimidated witnesses are offered special measures, receive them, and which they receive. This data is necessary to improve witness engagement with the criminal justice system, and to identify and assess disparities between different groups of victims and witnesses. While we found examples of good and improving local practice, there is a need for further national coordination.

Recommendation 19: The Ministry of Justice and Home Office should develop a national protocol for data collection on special measures, in conjunction with the Association of Police and Crime Commissioners, National Police Chiefs Council, CPS, HMCTS, and other agencies. This protocol should to include the recording of data on victim vulnerability and intimidation, witness choice over special measures, applications for and granting of specific measures, and protected characteristics.

Recommendation 20: The Ministry of Justice and the Home Office should jointly lead on producing an annual statistical bulletin on special measures provision to include police, CPS and courts data.

Recommendation 21: The National Criminal Justice Board should coordinate a data collection and monitoring improvement programme with Local Criminal Justice Boards. This should focus on monitoring victims' experience through special measures provision using management information and victim feedback; disseminating good practice; and learning from monitoring special measures provision.

9. Conclusion

More than twenty years after the introduction of special measures in the Youth Justice and Criminal Evidence Act 1999, this review has found that there is still work to do to ensure that vulnerable and intimidated victims and witnesses get the information and support they need to give their best evidence. We make 21 evidence-based recommendations to this end.

As stated at the start of this report, giving evidence in court is a daunting experience. Special measures are designed to alleviate the stress and anxiety associated with giving evidence. This review found that when special measures are used appropriately, there is widespread agreement amongst criminal justice system professionals that they achieve this purpose. Most judges agreed that regularly used special measures – such as screening witnesses from defendants and the use of live links – are effective. However, both the magistracy and judiciary were unable to definitively say how effective other special measures were. Our review indicates that this is due to their infrequent use and consequent lack of magistrates' exposure to them.

However, neither are we able to definitively state how often any of these measures are used due to the lack of centralised data. This raises concerns about their appropriate usage, equal access to these measures and current systems for monitoring and learning about what works in supporting victims of crime.

The Covid-19 pandemic has placed the courts under unprecedented pressures. Whilst many courts seemed to be meeting these challenges, there have been some notable impacts on the use of special measures. The increased use of live links, remote evidence centres and the accelerated roll-out of pre-recorded cross examination has shown that more can be done to improve the offer of special measures to vulnerable and intimidated witnesses. However, we found evidence of victims and witnesses falling through the gaps even before the pandemic, not being offered appropriate special measures, and that there are longstanding issues with the layouts of court buildings.

One of the key issues is the current framework for assessing victims and witnesses needs. For many, the journey from needs assessment to trial can be lengthy. The review found inconsistent assessment processes across forces and a perception that some vulnerable victims were appearing in court without appropriate special measures. The system passes information about witness needs across agencies and interfaces without any national policy about who is responsible for ensuring they receive the special measures they need. Equally, there needs are 'identified' by response officers, Victim Care Units, Witness Care Unit staff, CPS prosecutors, the Witness Service, court staff, judges and victim advocates. As no single agency has lead responsibility we found that this can lead to miscommunication and under-identification.

Special measures are a success story of the criminal justice system but our review has suggested that this success should be taken further, with the rollout of section 28 to intimidated as well as vulnerable witnesses; much better provision in the magistrates' court; more use of Ground Rules Hearings; more use of evidence in private; and better preparation for vulnerable and intimidated witnesses in advance of trial. Wider barriers to witness engagement, like poor communication, unsympathetic listing arrangements and poor court facilities also need addressing. These are what we see as the important next steps for special measures.

Annex: Methodology

The Office of the Victims Commission for England and Wales' review took a mixed methods approach to understand current provision, barriers and the impacts of special measures. The researchers used several research methods to gather data and evidence, including surveys with the magistracy, judiciary, interviews with representatives from criminal justice agencies and expert stakeholders, and analysis of published data.

The review complied with the Office of the Victims' Commissioner's Ethics Protocol (developed in collaboration with the NSPCC) and the key ethical principles of social research. Both members of the Reviews and Analysis team sit on the MoJ Ethics Advisory Group (EAG). The team made use of the MoJ EAG Ethics Checklist when preparing research proposals and sought ethical guidance from appropriate for this individual project through members of the Victims' Commissioner's Advisory Group and its Reviews and Analysis Advisory Group.

For our surveys and interviews, we addressed issues of informed consent by sharing information sheets which outline the aims and purpose of the survey; and, anonymity, by removing reference to identifiable individuals, courts and police force or HMCTS regions throughout the report. We received approval from the Judicial Office before surveying members of the magistracy and judiciary. The report was peer reviewed by external research experts who examined the methodology, the presentation of findings, and the appropriateness of the conclusions and recommendation.

The report draws on several sources of data and evidence for its conclusions and recommendations. Further details about each of these sources are included below:

Stakeholder and expert interviews

We conducted 13 one-to-one or group interviews with expert stakeholders (in total 18 people). Stakeholder interviews are appropriate because they enable researcher to collect experts' views, knowledge, experience insight both quickly and proportionate to the scope of this review. We undertook interviews with representatives from the College of Policing, Crown Prosecution Service, HMCTS, Ministry of Justice, National Crime Agency, and the National Police Chief's Council. We also interviewed a Registered Intermediary and three academics.

Interviews clustered in four areas

We took a stratified sampling approach to better understand how good, middling and less good regions provided support for vulnerable and intimidated victims. Initially, we used HMICFRS and HMCPSI recent inspection data, as well as HMCTS facilities audit data for Crown Courts, to rank the observed quality of support offered to vulnerable victims in CPS regions (encompassing both police force area and HMCTS regions). This included ranking regions based on their inspection scores and Victims Code compliance (four areas with incomplete data were excluded from the ranking). After selecting the four regions, we used a purposeful sampling approach to speak with representatives from each case study area (police force, Witness care Units, Witness Service and regional CPS offices).

Overall, we conducted interviews with seven representatives from local police forces, Witness Care Units, Citizens Advice Witness Service, across four case study areas. These interviews were designed to understand local practice and policies, the process of identifying vulnerability, officer training on vulnerability, information provided to victims and witnesses about special measures, the collection of data on vulnerability and special measures, information sharing between police forces and CPS. These interviews were conducted over

video calls, recorded, transcribed and thematically analysed by the research team. The identities of interviewees have been anonymised in this report.

Surveys with magistrates, district judges and Crown Court judges

We conducted online surveys with the magistracy and judiciary in November 2020. We applied for and received permission from the Judicial Office to conduct the surveys. The surveys are based on a self-selected sample of the magistracy and judiciary, so should not be treated as representative of all members.

We received a strong mix of respondents across different regions and between judges who had sat on trials during Covid-19 arrangements. We collected responses from 92 magistrates, 10 District Judges and 67 Crown Court Judges. The survey was split between respondents who had sat on trials since the resumption of trials during Covid: 45% of magistrates and District Judges who responded to the survey had not presided over trials resumptions after suspension due to Covid, where this was the case for 12% of Crown Court judges responding.

The survey was designed to take 15 minutes to complete and we asked judges questions about the following topics: the experience of delivering special measures during Covid-19; estimated frequency of special measures applications; how frequently see witnesses who should be offered special measures, but don't have these in place; views on the availability of facilities; barriers to the provision of special measures; impacts of providing Special Measures; special measures and Achieving Best Evidence; stress associated with giving evidence; Areas for improvement.

We thematically analysed these responses and prepared descriptive statistics.

Survey with Witness Service staff and volunteers

The OVC worked with Citizens Advice to gather the views of Witness Service staff nationally. A survey instrument was developed by the OVC and Citizens Advice and conducted in November 2020. This survey was completed by 105 members of staff or volunteers from the Citizens Advice Witness Service. This included: 77 Court-based Team Leaders or Deputy Team Leaders; 13 Outreach Team Leaders or Deputy Team Leaders; 10 Area Managers; and, 5 Volunteers.[49]

Those respondents who told us the name of the courts or areas they were based in (90 respondents) worked in courts from across all but 3 of the police force areas in England and Wales. Issues raised in the research tend to have been common across multiple areas; there were no instances in which a serious problem appears to have been confined to just one court or area. However, when taken individually, there was a relatively low number of respondents per area (the biggest number per area was 7 responses), which does limit the opportunity to identify area-specific issues.

Inspectorate data

We used published HMICFRS data on police assessment of victim vulnerability, namely their PEEL inspections which include overall assessments of how the police support vulnerable victims. We also requested data from recent HMCPSI Area and Headquarters inspection (2017 to 2019), which includes assessments of special measures applications.

[49] The survey was not directly shared with volunteers but was available to them to complete if TLs/DTLs passed on the link. This was due to the annual Volunteer Survey being administered at the same time.

Next steps for special measures

A review of the provision of special measures to vulnerable and intimidated witnesses

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