



Ministry
of Justice

Process evaluation of pre-recorded cross-examination pilot (Section 28)

John Baverstock
Ministry of Justice

Ministry of Justice Analytical Series
2016

Analytical Services exists to improve policy making, decision taking and practice by the Ministry of Justice. It does this by providing robust, timely and relevant data and advice drawn from research and analysis undertaken by the department's analysts and by the wider research community.

Disclaimer

The views expressed are those of the authors and are not necessarily shared by the Ministry of Justice (nor do they represent Government policy).

First published 2016



© Crown copyright 2016

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at mojanalyticalservices@justice.gsi.gov.uk

This publication is available for download at <http://www.justice.gov.uk/publications/research-and-analysis/moj>

ISBN 978-1-84099-743-9

Acknowledgements

From the Ministry of Justice the author would like to thank Clare Lyne and Jessica Kelly for their significant contributions to this project, and Jonathan Allen for his oversight.

The author would also like to thank NatCen Social Research for completing the interviews with witnesses; specifically Caroline Paskell, Tanya Crowther, Ashley Brown and Claire Bennett. Thanks are also due to two anonymous peer reviewers for their very helpful suggestions.

Finally, the author would like to thank those who took part in the interviews.

Contents

List of tables

List of figures

1. Summary	1
1.1 Background	1
1.2 Research approach	3
1.3 Key findings and implications for policy and practice	4
2. Introduction	10
2.1 Background	10
2.2 The Section 28 pilot	11
3. Process Evaluation	18
3.1 Methodology	19
3.2 Limitations	23
3.3 Pilot cases	25
4. Practitioner Interviews	26
5. Witness interviews	41
6. Monitoring Data: volumes, outcomes and timeliness	58
7. Conclusion	65
References	69
Appendix A	74
Roles and responsibilities under the expedited s.28 process	74
Appendix B	77
Achieved sample of witness interviews	77
Appendix C	78
Supplementary tables	78
Appendix D	84
Practitioner topic guides	84

List of tables

Table 6.1: Volumes of s.27 and s.28 cases in pilot courts (January - October 2014)	58
Table 6.2: Outcomes and progress of all s.28 and s.27 cases in the pilot	59
Table 6.3: Timeliness of s.27 and s.28 cases ¹	61
Table B.1: Achieved sample of participants split into witnesses and parents/carers	77
Table C.1: Outcomes and progress of s.27 cases in the wider court estate	78
Table C.2: Timeliness of s.27 and s.28 cases in the pilot courts – Charge date to cross-examination date and trial date	78
Table C.3: Timeliness of s.27 and s.28 cases in the pilot courts – Arrest date to cross-examination date and trial date	79
Table C.4: Timeliness of s.27 in the wider court estate – sent date to trial, arrest date to trial and charge date to trial	79
Table C.5: Timings targets contained in the s.28 pilot protocols	80
Table C.6: Timeliness of s.27 and s.28 cases in the pilot courts – average time taken from date of charge to date of First Hearing in the Magistrates' Court, and extent to which the 7 day deadline was met	80
Table C.7: Timeliness of s.27 and s.28 cases in the pilot courts – average time taken from date of First Hearing in the Magistrates' Court to date of Preliminary Hearing in the Crown Court, and extent to which the 14 day deadline was met	80
Table C.8: Timeliness of s.27 in the wider court estate - average time taken from date of charge to date of First Hearing in the Magistrates' Court (and extent to which the 7 day deadline was met)	81
Table C.9: Timeliness of s.27 in the wider court estate - average time taken from date of charge to date of First Hearing in the Magistrates' Court to date of Preliminary Hearing in the Crown Court, and extent to which the 14 day deadline was met	81
Table C.10: Timeliness of s.27 and s.28 cases in the pilot courts – average duration of Preliminary Hearings at the Crown Court	81
Table C.11: Timeliness of s.27 and s.28 cases in the pilot courts – average duration of Trials at the Crown Court	82
Table C.12: Timeliness of s.27 cases in the wider court estate – average duration of Preliminary Hearings and Trials at the Crown Court	82
Table C.13: Offence profile of s.27 and s.28 cases in pilot courts (Jan–Oct 2014)	82
Table C.14: Number of defendants in s.27 and s.28 cases in pilot courts (Jan–Oct 2014)	82
Table C.15: Legal aid profile of defendants in s.27 and s.28 cases in pilot courts (Jan–Oct 2014)	83

List of figures

Figure 2.1. The s.28 sample	12
Figure A.1. S.27 and s.28 processes	76
Figure D.1. Local Implementation Feedback	99

1. Summary

Section 28 (s.28) of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) allows vulnerable and intimidated witnesses to video record their cross-examination before the trial. This report presents findings from a process evaluation of a pilot of recorded pre-trial cross-examination (s.28). This includes analysis of monitoring data collected during the pilot, interviews with practitioners involved and interviews with witnesses.

1.1 Background

Special measures were introduced through the YJCEA. They include a range of measures to support vulnerable or intimidated victims and witnesses (other than the accused) to give their best evidence and help reduce some of the anxiety of attending court. Section 27 (s.27) allows for vulnerable or intimidated witnesses to record on video their evidence-in-chief before the trial. This recording is then played at the trial, while their cross-examination takes place live at trial. Section 28 (s.28) allows vulnerable or intimidated witnesses (who have had s.27 so recorded their evidence-in-chief) to record on video their cross-examination before the trial. Both their recorded evidence in chief and the recorded cross-examination is played at trial so the witness does not need to be present at the trial.

Section 28 is the last of the YJCEA special measures to be implemented other than those relating to the accused. Section 28 was not immediately implemented due to concerns about the procedural changes required, the available IT at the time and the cost. After a 2007 consultation, however, it was found there was widespread support for implementing s.28 for the most vulnerable witnesses, those who would otherwise be unable to access justice. The key aims of s.28 are for the cross-examination to happen earlier in the process than if cross-examination occurred at trial (to help aid recall); and to improve the quality of the evidence provided by the witness. It is envisaged that this will be achieved by:

- Making it easier for vulnerable/intimidated witnesses to recall/recount events clearly by reducing the length of time to cross-examination
- Improving the experience for witnesses (e.g. less stressful/traumatic/accessing the full range of support earlier)

S.28 was piloted in three Crown Courts (Liverpool, Leeds and Kingston-Upon-Thames). The courts chosen for the pilot were not selected on the basis of representativeness of the court estate,¹ therefore the findings from this pilot may not be generalisable to all courts. During the pilot, a limited definition of those eligible for s.28 was used; witnesses would be considered for s.28 if they:

- Had received a s.27 direction, and;
- Were vulnerable on the basis of their age (i.e. being under 16 years of age) or if they suffered from a mental disorder, significant impairment of intelligence and social functioning, or had a physical disability or disorder.

During the pilot, practitioners were issued with protocols that set out how the pilot processes would work. The protocols included a number of timings targets (also known as an expedited timetable) that needed to be complied with in order that s.28 cases were ‘trial-ready’ in advance of the expedited cross-examination hearing (see Table C.5 in Appendix C for the timings). Additionally, the pilot protocols made a Ground Rules Hearing mandatory for s.28 cases in the pilot,² and this was to include detailed appraisal of the defence questions.

The pilot covered cases sent³ to the Crown Court during the period from 30th December 2013 to the end of October 2014. Witnesses were interviewed between March and August 2015, to allow time for trials to conclude and the post-trial appeal period to pass, in order not to interfere with the process. During the pilot period, 194 s.28 cases and 196 s.27-only cases were sent to pilot courts. The majority of these were sexual offence cases; 72% of the s.28 cases and 81% of the s.27 cases sent during this period. The pilot courts have accumulated more experience of s.28 cases since data collection for the pilot evaluation ended.

¹ Court estate throughout this report refers to all courts in England and Wales. These are managed by HM Courts and Tribunals Service and are split into seven regions across England and Wales.

² The Ground Rules Hearing can occur in special measure applications other than s.28, for example in s.27 cases where an intermediary is appointed. These usually cover details such as when the witness may need a break in the cross-examination. See Appendix A for further details. Intermediaries assist vulnerable witnesses and victims in communicating during an investigation and at trial.

³ ‘Sent’ is used here to refer to both indictable (cases which may only be tried in the Crown Court) and either-way offences (cases that may be tried in the Magistrates or the Crown Court). This data is not recorded on CREST, the court system used in this analysis. Therefore ‘sent’ date is used as the closest proxy to the date a case was heard in the magistrates’ court.

1.2 Research approach

A process evaluation was undertaken to help understand whether the pilot processes worked as intended and to help guide policy decisions on whether and how best to roll out s.28 more widely after the pilot.⁴

The approach was selected to provide the views of both practitioners and witnesses, to identify practical implementation issues with the pilot and to identify how these could be improved. Monitoring data was also gathered to provide an indication of the extent to which the pilot achieved the aim of reducing the time taken for s.28 cases to be cross-examined, and to explore case outcomes and volumes. To this end, the process evaluation comprised a number of strands:

- Interviews with a sample of practitioners (N = 40) involved in implementing the pilot. These interviews sought to identify any practical issues with implementation and to explore practitioners' views on the potential for s.28 to improve witnesses' experiences of being cross-examined. In addition, an informal consultation exercise via the Local Implementation Teams was run to help make sure that all of the practitioners involved in the pilot were able to comment on the s.28 process. See Appendix D for details of the questions asked in the interviews and the consultation exercise.
- Interviews between March and August 2015 with a sample of witnesses who received s.28 and s.27 and their parents/carers (N=16), to understand how the process was working from the witness perspective, and to identify potential improvements (externally commissioned and carried out by NatGen Social Research).
- Analysis of monitoring data collected during the pilot, to help generate indicative estimates of:
 - a) the potential outcomes and timeliness of s.28 cases vs. s.27 cases; and
 - b) the potential volume of s.28 cases under any wider roll-out.

⁴ The pilot did not specifically aim to test the validity of the concerns about s.28 which delayed its implementation.

1.3 Key findings and implications for policy and practice

This section presents implications for policy and practice and some considerations for roll-out based on the findings of this evaluation. Since the end of the pilot, the courts involved have continued with the measure until a decision on roll-out is made and so have obtained more experience of implementing s.28.

Limitations

The courts chosen for the pilot were not selected on the basis of representativeness of the court estate, therefore the findings from this pilot may not be generalisable to all courts. A small number of interviews were carried out with prosecution witnesses and their parents and carers. The views expressed may therefore not represent those of all s.28 and s.27 witnesses. Findings from the monitoring data are based on a relatively small number of cases and findings may not be replicated under any roll-out (see Chapter 6).

S.28 scope

- Under the pilot definition of s.28,⁵ around half of s.27 cases became s.28 cases. Under any wider roll out, however, this proportion could be higher⁶ or lower.
- Practitioners interviewed suggested that greater judicial discretion over who is able to receive s.28 would be beneficial - for example in cases of siblings or friends who fall either side of the age cut-off. The scope for s.28 during the pilot was reduced to endeavour to make sure volumes were manageable, and some practitioners felt this would need to be the case on any roll-out as well because of the extra resource required for s.28 cases. These two potentially contradictory points would need to be considered on any roll-out to balance the volume of cases with judicial discretion over which cases received s.28.

⁵ The scope of the pilot was witnesses who had received s.27 provisions and were vulnerable based on their age (being under 16 years of age), or if they suffered from a mental disorder, significant impairment of intelligence and social functioning, or had a physical disability or disorder.

⁶ Sometimes changes in practice take a while before take-up increases. Indeed, feedback from the practitioner interviews indicates that early identification of eligible s.28 witnesses had improved during the course of the pilot as awareness became more widespread and the processes became more embedded.

Communication of s.28 to practitioners and witness identification

- All practitioner groups interviewed acknowledged that some eligible witnesses were not being identified by the police and CPS at a sufficiently early stage. This was perceived as a potential source of delays and could lead to the exclusion of some eligible witnesses from the pilot.⁷ This suggests that awareness of eligibility of witnesses should be raised among these groups so that witnesses are being identified at the correct point.

Communication of s. 28 to witnesses

- Some s.28 witnesses had no sense of the cross-examination being earlier than it would have been otherwise, as these were still held many months after each witnesses' Achieving Best Evidence (ABE)⁸ interview. This suggests that communication of the process and aims of s.28 to witnesses could be improved.

Workload and impact on other (non s.28) cases

- The s.28 pilot processes had a perceived impact (to varying degrees) on the workload of all practitioner groups interviewed, particularly relating to the expedited timeframes at the outset of cases and the additional hearings required for s.28. The police, CPS and defence had concerns about the expedited timeframes. The police also raised concerns about the expedited timeframes for third party disclosure, but other practitioners did not raise this as a major issue. Despite this, many of the judges in the sample observed that front-loading the work on s.28 cases had a positive effect on the amount of work required towards the end, particularly at the cross-examination and trial stage.

Most practitioner groups, however, felt non-s.28 cases needed to be de-prioritised to make sure that the expedited timetable for s.28 cases could be achieved. The potential impact of the expedited s.28 timetable on non s.28 cases and resource implications (particularly for the police) would need to be considered under any wider roll-out. Consideration could also be given to adapting the expedited timetable.

⁷ Being eligible for special measures does not mean that the court will automatically grant them. The court has to be satisfied that the special measure is likely to maximise the quality of the witness's evidence before granting an application.

⁸ The witness provides their police evidence which is video-recorded for its use as evidence-in-chief.

Reducing delays in the process

- A key aim of the s.28 provision is to reduce delays with cross-examination. Interviews with witnesses, however, found that cross-examination dates had been changed in both s.27 and s.28 cases, sometimes at short notice. In s.28 cases, witnesses recalled delays to their cross-examination being caused by defendants' availability.⁹ In s.27 cases witnesses cited a wider set of reasons, including judges' schedules. S.27 witnesses reported spending longer waiting at court, due to procedural delays which did not affect s.28 witnesses.

The IT solution

- Practitioners (particularly the judges and court staff) felt strongly that the technology used in the pilot was inadequate. Key issues included an insufficient amount of screen space dedicated to witnesses and issues with the sound quality during playback; the fact that the s.28 equipment caused live link rooms to be unable to be used for other live-link evidence; and an inability to play CCTV footage to witnesses during cross-examination. A number of these findings have been or are in the process of being addressed.

Remote links

- Some practitioners felt that it would be beneficial for any roll-out of s.28 to include an option for witnesses to be cross-examined in a remote location outside the court estate. Views among both s.27 and s.28 witnesses were mixed. Both s.27 and s.28 witnesses however, highlighted advantages of convenience and security, in not having to travel so far and knowing that defendants and their supporters would not be in the building or its vicinity.

Accommodation

- A number of practitioners interviewed raised concerns about the live link rooms in which the cross-examination recordings take place. For example, some practitioners felt that the rooms were not large enough, were uncomfortable or not sufficiently child-friendly. Appropriateness of rooms would need to be considered under any wider roll-out.

⁹ Defendants are present at the cross-examination of both s.28 and s.27 witnesses.

Cross-examination experience

- The process of being cross-examined proved stressful, unsettling and difficult both for s.28 and s.27 witnesses. Most of the practitioners who attended s.28 cross-examinations, however, were of the opinion that the s.28 process was reducing the level of distress/trauma suffered by witnesses.
- Practitioners suggested that the witness experience was improved by the questioning styles adopted, length of cross-examinations and the way s.28 cross-examinations were listed. The majority of practitioners who attended cross-examinations agreed that the questions posed to witnesses at cross-examination were more focused and relevant than at s.27 cross-examinations. They thought this was due to the increased scrutiny of Ground Rules Hearings. Some practitioners also thought that the quality of evidence¹⁰ was higher in s.28 trials than conventional trials, although a minority of defence advocates felt that s.28 questioning protocols limited their ability to react to answers given by witnesses.
- Whilst only a small sample, s.28 witnesses reported being cross-examined for shorter periods of time than s.27 witnesses. S.28 witnesses recalled being cross-examined for between 20 and 45 minutes, whereas s.27 witnesses reported giving evidence for between 45 minutes and three hours. Shorter cross-examinations were considered appropriate, whilst giving evidence for over an hour was perceived as contributing to a negative experience.
- Both s.27 and s.28 witnesses interviewed primarily evaluated their cross-examination experience in relation to how the defence advocate(s)¹¹ dealt with them. Interviews with witnesses found that the positive experiences were clustered among s.28 cases, and the negative experiences among the s.27 cases (however, not all s.28 witnesses reported a positive experience). Witnesses who had negative experiences and their parents/carers felt defence advocates should be more considerate of, and responsive to, witnesses' age and other vulnerabilities.

¹⁰ Quality of evidence is defined as 'quality in terms of completeness, coherence and accuracy' by section 16(5) of the Youth Justice and Criminal Evidence Act 1999. Coherence refers to a witness's ability in giving evidence to give answers which address questions put to the witness and can be understood both individually and collectively. Practitioners, however, may have interpreted the meaning of quality differently.

¹¹ Advocate is used throughout this report to include both barristers and solicitor advocates.

This, and the practitioner feedback, suggests that greater scrutiny of cross-examination questions at s.28 Ground Rules Hearings may lead to a more positive experience of cross-examination. It also indicates that defence advocates may be more accommodating of young and vulnerable witnesses' interests in the absence of a jury. Consideration, therefore, should be given to how this could be applied in other cases.

Differences in the length of time to cross-examination

- An aim of s.28 is to bring the cross-examination forward to an earlier point in time. The monitoring data suggests that the length of time for cases to reach trial was similar for s.28 and s.27 cases (on average 199 days for s.28, 182 days for s.27). It appeared, however, to take around half the time for s.28 witnesses to be cross-examined (on average 94 days between sent date and cross-examination for s.28, and 182 days between sent date and trial for s.27¹²). Practitioners from across all of the groups interviewed reported that witness cross-examination took place earlier in s.28 cases than in conventional trials too. Most felt that there were obvious benefits in terms of the witnesses' ability to recall events compared to s.27 cases.¹³

Trial length

- The monitoring data showed trial durations were slightly shorter on average in s.28 cases than in s.27 cases. The shorter trial length may mean this measure could save court time, even taking into account the longer Preliminary Hearings. There are other potential factors, however, which could mean trials may be shorter, and more evidence would be required in order to determine the cause of this difference.

¹² The time between sent date and trial was used as a proxy for the date of cross-examination for s.27 cases, as witnesses were cross-examined at trial.

¹³ It was not possible, however, for practitioners to gauge the extent to which recall had improved – the reason consistently cited for this was because every witness and case is different.

Differences in early guilty plea¹⁴ rates and cracked trials

- The monitoring data indicated there were fewer cracked trials for s.28 cases (13 cases, 8% of all concluded s.28 cases) than s.27-only cases (47 cases, 27% of all concluded s.27 cases). The monitoring data also indicated that there were more guilty pleas before trial in s.28 cases (76 cases, 48% of all concluded s.28 cases) than before trial in s.27-only cases (16 cases, 9% of all concluded s.27 cases). It is possible however, that some of the difference between s.28 and s.27 cases may be attributable to recording practices in the pilot.¹⁵

¹⁴ Early guilty pleas are defined in this report as guilty pleas that were entered at any point before trial.

¹⁵ s.28 cases were monitored from an earlier stage than s.27 cases, which may mean that there were some s.27 cases with early guilty pleas that were not recorded.

2. Introduction

2.1 Background

Special measures were introduced through the Youth Justice and Criminal Evidence Act (YJCEA) 1999. They include a range of measures to support victims and witnesses (other than the accused) to give their best evidence and help reduce some of the anxiety of attending court. The full menu comprises:

- a) Use of screens in courtroom (section 23)
- b) Giving evidence via live link (section 24)¹⁶
- c) Giving evidence in private (section 25)
- d) Removal of wigs (section 26)
- e) Video-recording evidence in chief before trial (section 27)
- f) Video-recording cross-examination and re-examination before trial of a witness whose evidence in chief is given under section 27 (section 28)
- g) Examination of witness through an intermediary (section 29)
- h) Use of physical aids to communication (section 30)

Witnesses are eligible for special measures if they are:

- a) Vulnerable on the basis of
 - their age (i.e. under 18 years old)
 - or if they suffer from a mental disorder within the meaning of the Mental Health Act 1983,
 - or have a significant impairment of intelligence and social functioning,
 - or have a physical disability or a physical disorder,**and** the quality of their evidence is likely to be diminished as a consequence, or;
- b) Intimidated – i.e. if the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings. Witnesses who are complainants in a sexual or Modern Slavery offence and request a special measure are also eligible.

Section 28 (s.28) allows for a vulnerable or intimidated witness to pre-record their cross-examination and re-examination before the trial and for the recorded video to be presented at trial. It is the last of these special measures¹⁷ to be implemented, due to concerns about the

¹⁶ A live link enables witnesses to give evidence during the trial from outside the court room through a televised link to the courtroom.

¹⁷ Other than those relating to the accused.

procedural changes required, the available IT at the time and the cost (Spencer and Lamb 2012). After a 2007 consultation, however, it was found there was widespread support for implementing s.28 for the most vulnerable witnesses, those who would otherwise be unable to access justice. Witnesses will first have had to have a Section 27 (s.27- i.e. had their police evidence video-recorded for its use as evidence-in-chief) before being eligible for s.28.

2.2 The Section 28 pilot

On the 11th June 2013, the then Secretary of State for Justice announced the piloting of s.28 in Liverpool, Leeds and Kingston-Upon-Thames Crown Courts and for an assessment of the pilot activity to be conducted.

The police and CPS started identifying suitable cases from 30th December 2013 and the piloting of the pre-recorded cross-examinations commenced at the end of April 2014. The pilot period was due to run for 6 months (i.e. pre-recording of cross-examinations until the end of October 2014). The pre-recording of cross-examinations in the pilot courts has continued beyond that point, however, and is still ongoing. This is to allow vulnerable witnesses to experience the measure until a decision is made on any future rollout. The agencies involved also expressed wishes to continue to pilot. The focus of the evaluation remained on cases sent to the Crown Court during the period from 30th December 2013 to end of October 2014.¹⁸

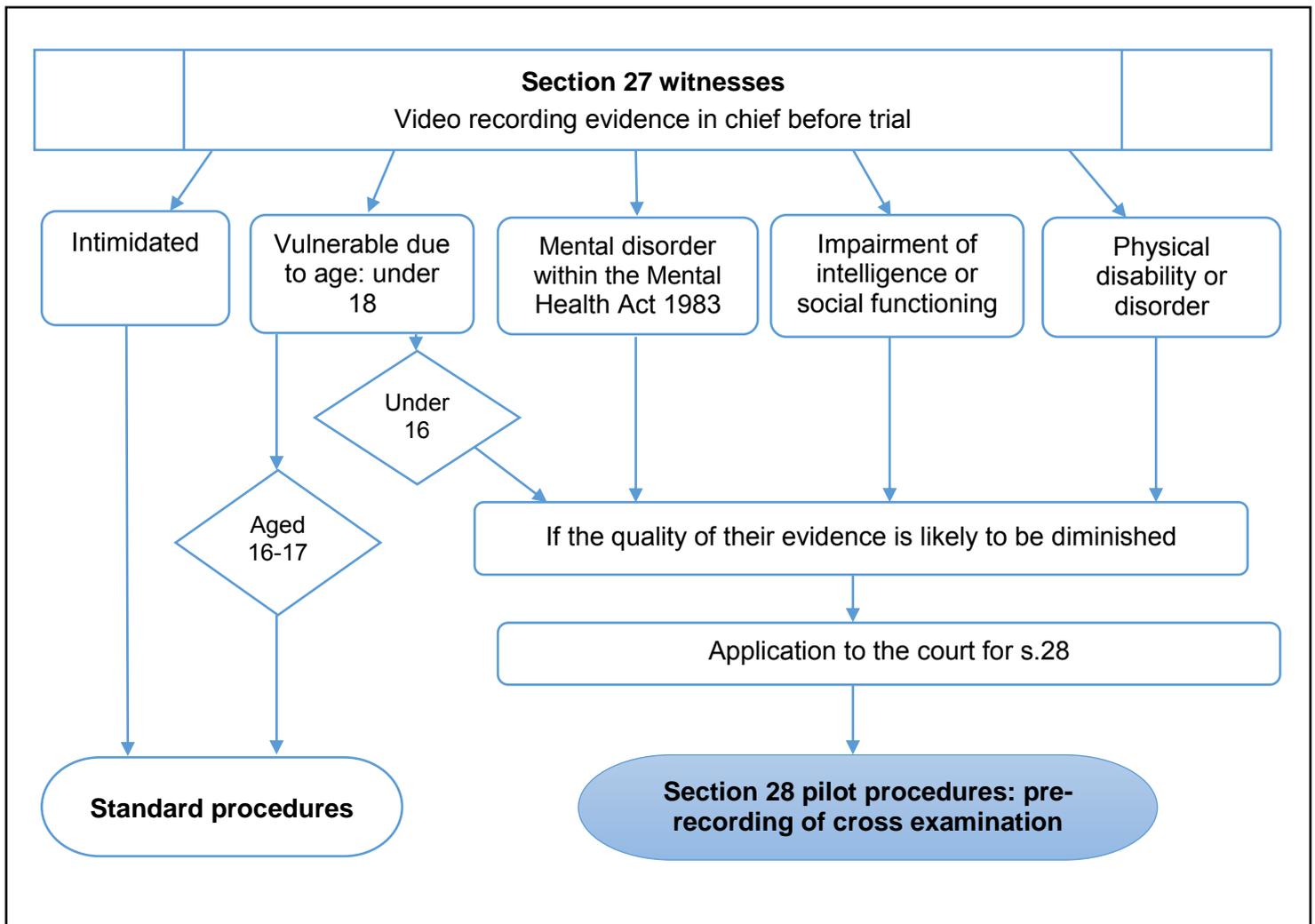
To make sure that case numbers were manageable during the pilot, a limited definition of those eligible for s.28 was agreed by the Stakeholder Advisory Group and Project Board for the pilot.¹⁹ During the pilot, witnesses would be considered for s.28 if they:

- Had received a s.27 direction (i.e. to have evidence in chief pre-recorded before trial), and;
- Were vulnerable on the basis of their age (i.e. being under 16 years of age) or if they suffered from a mental disorder, significant impairment of intelligence and social functioning, or had a physical disability or a physical disorder.

¹⁸ Witnesses were interviewed between March and August 2015, to allow time for trials to conclude and the post-trial appeal period to pass in order not to interfere with the process.

¹⁹ A Stakeholder Advisory group (comprising representatives from the criminal justice system, academia and victim & witness support charities) and a Project Board were established to provide oversight and assurance for the project.

Figure 2.1. The s.28 sample



This means that the age for eligibility in the pilot may be lower than for any roll-out and intimidated witnesses were not eligible (unless they were also vulnerable on the basis of their age or capacity to communicate as specified above).

Before the commencement of the pilot, practitioners were issued with protocols that set out how the pilot processes would work.²⁰ The protocols included a number of timings targets that needed to be complied with in order that s.28 cases could be ‘trial-ready’ in advance of the expedited cross-examination hearing. These timings are also known as the expedited timetable. Table C.5 in Appendix C sets out the pilot protocol timing targets and indicates which of these were monitored for the purposes of this evaluation. The protocol for the s.28 pilot also includes a mandatory Ground Rules Hearing which precedes the

²⁰ *Judicial Protocol on the Implementation of section 28: ‘Pre-recording of cross-examination and re-examination’* September 2014, Judiciary of England and Wales and *Guidance Note for section 28 Ground Rules Hearings at the Crown Court in Kingston, Leeds and Liverpool’* September 2014.

cross-examination. The Ground Rules Hearing can occur in special measure applications other than s.28 cases, usually when an intermediary is appointed. In the s.28 pilot, the Ground Rules Hearing featured line-by-line appraisal of the defence team's cross-examination questions, and (when appointed) a stronger role for intermediaries. Appendix A provides further details on how the s.28 pilot process differs to the usual process.

The key aims of s.28 are for the cross-examination to happen earlier in the process than if cross-examination occurred at trial; and to improve the quality of the evidence provided by the witness. It is envisaged that this will be achieved by:

- Making it easier for vulnerable/intimidated witnesses to recall/recount events clearly by reducing the length of time to cross-examination
- Improving the experience for witnesses (e.g. less stressful/traumatic/accessing the full range of support earlier)

These aims are consistent with a range of UK and international evidence on witness experiences of giving evidence at court. The following references to literature are not exhaustive, but provide an indication of some existing research relevant to the aims of s.28.

Improved recall

Previous research has shown that, in general, the amount of information recalled decreases as time from the event increases (Ebbinghaus, 1913, Read & Connolly, 2007, cited in Westera, 2013). Fine grain detail is more rapidly forgotten than coarser detail (Begg & Wickelgren, 1974, Goldsmith, et al. 2005, Kintsch, et al. 1990, cited in Westera, 2013). Further, over time there is more opportunity for memory distortions that affect the quality of information. Research has also found that the loss of recall is more pronounced amongst vulnerable adults and (especially younger) children (Gudjonsson, & Henry, 2003). O'Neill, et al. 2013 suggest younger children have a higher rate of forgetting than older children – specifically at the 'long delay' (approximately 6 months) but not at the 'short delay' (approximately 1 week). Another study (Bala, et al., 2005) has reported that reducing delay between reporting and trial is crucial to ensuring that a child is able to give the most complete testimony possible.

Research has also found that stress can have an impact on the accuracy of recall. For example, Deffenbacher et al (2004) conducted meta-analyses on 27 independent tests of the effects of heightened stress on eyewitness identification of the perpetrator or target person and separately on 36 tests of eyewitness recall of details associated with the crime. The study found considerable support for the hypothesis that high levels of stress can have a

negative impact on both types of eyewitness memory. In line with this, Konradi (1999) notes that video-recorded evidence may enhance the quality of information because many complainants report that in the courtroom they often concentrate on controlling their emotions as expected in this formal environment.

The evidence cited above appears to add weight to the case for the implementation of pre-trial cross-examination for young witnesses, particularly given the length of time that witnesses can wait to be cross-examined at trial. Plotnikoff and Woolfson (2009) found that this was over 11 months in the Crown Court and that many of the cases involving young witnesses actually take longer to conclude than the norm.

Improved experience

A further aim of s.28 is to improve the experience for witnesses. Research has shown that the lead up to the trial can be stressful, e.g. Plotnikoff and Woolfson (2009), as can the cross-examination itself. For example Hamlyn et al. 2004 found that most victims and prosecution witnesses (71% of 306 young witnesses) who were cross-examined said that the experience had upset them. According to interviews with Witness Service respondents in Burton et al. (2006), vulnerable/intimidated witnesses were more upset and stressed by cross-examination than anything else. The main problem for these witnesses was the form of questioning by advocates in cross-examination (e.g. language and communication problems, being called a liar and the fear of repercussions from the trial).

O'Neill et al. (2013) notes that the highly suggestive nature of many cross-examination questions may lead children to assume that the interviewer is knowledgeable about the event in question (Snyder & Lindstedt, 1995, cited in O'Neill, et al. 2013). The frequent use of leading questions during cross-examination creates an atmosphere in which a particular response is expected. Children are highly likely to answer these types of questions, often incorrectly, even when told that it is okay to say 'I don't know' (Cassel et al., 1996, O'Neill, et al. 2013). In addition, studies have found that cross-examiners rely heavily on leading or pre-suppositional questions in court (Hickey, 1993; Hobbs, 2003; Wheatcroft & Ellison, 2012) which can mislead witnesses and impede witness accuracy (Carter et al, 1996; Loftus, 1975). Analysis of trial transcripts and court observation has highlighted how witnesses are also commonly confronted with multi-part questions and questions containing double-negatives and difficult vocabulary (Brennan & Brennan, 1988; Davies & Seymour, 1998; Hanna et al., 2011; Taylor, 2004). Studies indicate that such questions can be difficult to decipher and respond to with accuracy (Cashmore, 1991; Perry et al, 1995; Wheatcroft & Wagstaff, 2003; Wheatcroft, Wagstaff, & Kebbell, 2001).

Therefore, modifying the approach to cross-examination may also improve the accuracy and reliability of the witnesses' answers, as well as improving the experience for witnesses. Research from New Zealand, where questions were not routinely vetted before the cross-examination took place, has shown that counsel did not perceive any differences in the style of questioning used in the pre-recorded cross-examinations compared to non pre-recorded cross-examinations (Davies 2013, Henderson 2012). Therefore, although, s.28 can be delivered with traditional cross-examination techniques, it may also provide the opportunity for improvements to questioning techniques. Cossins (2012) has argued that there is little point expediting cross-examinations if this is not combined with improvements to questioning techniques in order to make the process less stressful and traumatic for witnesses.²¹

The effectiveness of special measures

There is evidence to suggest that special measures have a perceived positive impact on witness experience. Hamlyn et al (2004) found that 91% of the 111 mainly child witnesses who had given video-recorded evidence-in-chief (s.27) found it helpful. In addition, vulnerable/intimidated witnesses who had special measures were significantly more likely to express overall satisfaction with the criminal justice system, compared with those who did not have special measures (Hamlyn et al, 2004). Plotnikoff and Woolfson (2009) found that 85% of 88 young witnesses whose recorded statement was used as their evidence-in-chief said this was helpful. They also found that 40% of those who gave evidence described problems with equipment or in playing their visually recorded statements. In addition, 12% of the 129 young witnesses who gave evidence by live link saw the defendant on their TV screen, which is not supposed to happen.

There is evidence to suggest that special measures have a perceived positive impact on the evidence provided by witnesses. For example, Hamlyn et al (2004) found that a third (33%) of those using special measures said that they would not have been willing and able to give evidence if these forms of assistance had not been available to them. Sex offence victims using special measures were particularly likely to say that the measures enabled them to give evidence that they would not otherwise have been willing or able to give (44%) (Hamlyn et al, 2004). Hamlyn et al (2004) found that amongst those not given special measures, most (72%) of the vulnerable/intimidated witnesses thought it would be helpful to have the cross-examination process recorded on video before the trial instead of being questioned during the trial. Fifty-three per cent said this would be 'very helpful'.

²¹ Some of the recommendations included reducing the use of repetitive questions, references to the child being a liar and complex questions (Cossins 2012).

The effect of video-recorded testimony on juror decision-making, however, is less clear. Studies have found that prospective jurors believe that it is easiest to determine a child's truthfulness and fairest to the defendant when the child testified live in court (e.g. Bradley et al 2012). This, however, is largely unsupported by previous research. For example, studies comparing children's live testimony to videotape testimony (Landström & Granhag, 2010) and live testimony to CCTV testimony (Landström & Granhag, 2010; Orcutt et al., 2001) did not find significant differences in adults' ability to detect children's truthfulness as a function of the method of testimony. According to Westera et al (2013), several studies suggest that the video medium in itself does not affect overall credibility judgements about the witness or case outcome when compared to live testimony in the courtroom.

Pre-recorded cross-examination in other countries

Pre-recorded cross-examination is currently in operation in some jurisdictions in Australia. In addition, a number of cases have also been completed in New Zealand where the child's entire testimony was pre-recorded, but its use is now restricted to rare circumstances. Prosecutors and defence counsels identified the perceived advantages and disadvantages of pre-recorded hearings in these cases in New Zealand (Davies and Hanna 2013). Some of the key perceived advantages included:

- Less stressful for witnesses: done earlier, more certainty with dates/times, debriefing immediately
- Increases the chances of guilty pleas/charges dropped or indictment changed after the pre-recorded hearing
- Prosecutor has more time to prepare and debrief witness than at a trial; more time for defendant to prepare defence before trial

Some of the key perceived disadvantages included:

- Witness may be recalled to give evidence if substantial information emerges after the pre-recorded hearing before the trial
- Concerns that the DVD emotionally distances the jury from the evidence; concerns that it is less real for jury which might lead to unfair treatment of complainant and less likelihood of conviction (also CCTV).
- The police and Crown have more time to bolster a case after cross-examination

In Western Australia, pre-recording hearings were perceived favourably on the whole by the judiciary (Sleight, 2007).

The next chapter outlines the process evaluation providing detail on the methodology used and the limitations of this data.

Chapter 4 presents the evidence from interviews with practitioners.

Chapter 5 explores witnesses' views and experiences of s.28 and how these compare with s.27 witnesses, based on interviews with s.27 and s.28 witnesses and their parents or carers.

Chapter 6 presents the findings from analysis of monitoring data gathered during the pilot.

3. Process Evaluation

In order to assess the pilot, a process evaluation was undertaken. This aimed to help understand whether the pilot processes were working as intended and to help guide policy decisions on whether and how best to roll out s.28 more widely post the pilot. This is a process and not an impact evaluation and issues of cost effectiveness are not addressed as part of this study.

The specific research objectives were:

- Explore practitioner experiences of implementing s.28, with a view to identifying process improvements ahead of any wider roll-out.
- Explore the witness experience of s.28 and the potential for s.28 to make it easier for them to recall/recount events clearly.
- Monitor speed and case resolution data of pilot cases to give some limited indication of the potential timeliness of s.28 cases vs. s.27 cases in the pilot courts.
- Help to identify as far as possible the potential number of cases/witnesses that might be eligible for s.28 in a wider roll-out.

Throughout the report, comparisons are made between witnesses who have received s.27 and s.28 directions. Those witnesses who had received a s.27 direction were considered a fit for purpose comparison as witnesses in the pilot are only eligible to be cross-examined in accordance with s.28 if they have first received a s.27 direction. S.28 witnesses are therefore a limited and specific sub-set of s.27 witnesses. The s.28 witnesses may share similar characteristics to s.27 witnesses in the pilot, however the overall witness characteristics of the s.27 witnesses group may be different from the s.28 witnesses (see Fig. 1). The lack of direct match limits the accuracy of the comparison of s.27 and s.28 cases in the pilot courts. Nonetheless, these comparisons are used to help provide an indication of the potential effect of s.28, but differences found may not be replicated under any roll out.

3.1 Methodology

The approach was selected to provide the views of both practitioners and witnesses, to identify practical implementation issues with the pilot and to identify how these could be improved. Monitoring data was also gathered to provide an indication of the extent to which the pilot achieved the aim of reducing the time taken for s.28 cases to be cross-examined, and to explore case outcomes and volumes. To this end, the process evaluation comprised a number of strands:

Practitioner interviews

Forty interviews were conducted during January to March 2015. Interviews were carried out with 13 practitioners each at Leeds and Liverpool and 14 practitioners at Kingston.

Specifically, interviews were conducted with:

- 8 members of the judiciary (out of the 13 judges that were involved in the pilot)
- 11 members of police staff
- 2 members of Crown Prosecution Service staff
- 3 defence advocates (including one who also acted as a prosecution advocate)
- 11 members of court staff²²
- 3 intermediaries
- 1 witness care officer
- 1 member of Witness Service staff

Sampling

Practitioners were recruited to take part in the interviews with help from the Local Implementation Leads at each pilot court. The Local Implementation Leads were contacted and asked to provide a list of practitioners who attended the Local Implementation meetings, focusing on those who had most involvement with the pilot. Practitioners were sampled from the lists provided from each court, ensuring representation from different agencies and roles, including the Local Implementation Leads themselves. Selected practitioners were contacted by MoJ AS to see if they would be willing to take part.²³ Some individuals contacted suggested interviewing other practitioners that had been involved in the pilot.

²² These consisted of 3 operations managers, 2 listing team members, 3 clerks, an usher, a case progression officer and an IT manager.

²³ There were difficulties securing participants from the CPS group so the views of these practitioners in particular may not represent those of all practitioners in this group.

Interviews

Semi-structured interviews were conducted by MoJ Analytical Services (AS). The majority of interviews were conducted in person at the participant's place of work but six interviews were conducted via telephone. They sought to explore how the s.28 process was working from the perspective of practitioners, including what was working well and less well and whether any improvements could be made. This included:

- awareness, communications and training around the pilot;
- whether they had any additional responsibilities;
- whether the pilot processes were working and whether they could be improved;
- witness perceptions of their experience.

See Appendix D for further information on the questions.

Analysis

The interviews were recorded and transcribed, then transcriptions were coded, the prevalent themes identified, cross-checked between analysts and quality assured.²⁴ Following this, the themes were organised into a matrix that was structured by group (e.g. judiciary). Relevant quotes, as supporting evidence, were entered in the matrix and the themes were developed further. It is from this that the findings section has been drawn.

Informal consultation

In addition to the practitioner interviews, an informal consultation exercise via the Local Implementation Teams was run to help make sure that all of the practitioners involved in the pilot were able to comment on the s.28 process.

Practitioners were also encouraged to send any other feedback to MoJ analysts. Some of the practitioners who sent in responses to the questions, or feedback were also interviewed. The few responses²⁵ received were coded and themes entered into the matrix. These are included in the findings section.

²⁴ For 37 interviews a professional transcription service was employed. For 3 interviews, notes were taken by an MoJ analyst during the interviews due to recording equipment being unavailable for these interviews.

²⁵ Fewer than ten responses were received.

Witness interviews

The research involved 16 participants and related to 11 separate cases (7 s.28 and 4 s.27); the achieved sample composition is in Appendix B. The research engaged directly with 5 s.28 and 3 s.27 witnesses who were young (12-17) and/or had a mental health condition, physical, or learning disability which could have hampered their ability to give evidence. The research also included parents or carers of young or vulnerable witnesses (7 s.28 and 1 s.27) to give additional insights into how the system should be improved for them.

Sampling

Prospective research participants were purposively selected from all concluded s.28 cases and comparable s.27 cases during the trial period from the three pilot courts and three comparison courts (over 300 witnesses).²⁶ Having sampled for diversity in witness age and gender, case outcome and offence type, research participants were recruited with the assistance of Witness Care Units (WCUs) serving the crown courts, as WCUs have responsibility for communicating with witnesses about their case and so could inform them about the opportunity. Witnesses were selected from anonymised lists of witnesses at each court, and where lists had more than 15 witnesses, potential participants were sampled based on age, gender, case type and case outcome. Each potential participant was checked with WCUs before the individual was contacted to make sure ethical and safeguarding concerns arising from contacting them would be minimised. Some witnesses were de-selected at this stage due to these concerns.

WCUs phoned parents/carers of witnesses to inform them that information on the research was being sent to them, and if after seeing this information parents/carers agreed to take part, their contact details were sent to NatCen to arrange interviews. As there were a number of challenges with the WCU recruitment route (including WCUs' capacity and willingness of witnesses/parents/carers to participate), the recruitment approach was expanded to engage voluntary-sector organisations,²⁷ in informing potential participants of the study. The obstacles faced in recruiting participants for such sensitive research, especially with young and vulnerable people, are noted in other studies.²⁸ The methodology for voluntary sector

²⁶ The pilot courts were Liverpool, Leeds and Kingston-Upon-Thames, the comparison courts were Sheffield, Manchester Crown Square and Wood Green in London. The sample data was securely shared with NatCen in an anonymised form, using new reference codes rather than any police or court codes which could have identified witnesses or cases.

²⁷ The organisations worked with carers, children, young people or people of any age with disabilities or mental health needs.

²⁸ Plotnikoff, J. and Woolfson, R. (2009) *Measuring up: Evaluating implementation of Government commitments to young witnesses in criminal proceedings*. London: NSPCC; Beckett, H. and Warrington, C. (2015) *Making Justice Work: Experiences of criminal justice for children and young people affected by sexual exploitation as victims and witnesses*. Luton: University of Bedfordshire.

organisations involved sending recruitment materials to these organisations, which were placed where individuals could take them without identifying themselves as victims. Staff were asked not to approach individuals about the study unless they had previously identified themselves as a witness or unless it was otherwise appropriate.

Interviews

A set of semi-structured topic guides were developed for the interviews, with input from the s.28 project board which included support organisations and academics. The same topics were covered in each but the approach was tailored to the age and ability of the participant.

Participants were interviewed in person or by telephone by NatGen researchers experienced in engaging with victims of serious crime, young people, children and people with additional needs. Witnesses were offered a £20 retail voucher to thank them for their time.²⁹ Extending the time between cross-examination and interview may have discouraged some prospective participants from being interviewed, but it also avoided the risk of the research data being requested as part of any appeal.

Analysis

All interviews were transcribed and the transcripts used alongside summary notes on each interview to draw out key themes. The transcribed data was organised for case and theme based analysis in relation to the stages of giving evidence, the specific issues on which the research focused, and comparison of the s.28 and s.27 witness experiences.

Monitoring data

The monitoring data was obtained from four sources:

- Court staff in the three pilot Crown Courts collected case numbers and monitoring data on cases receiving the s.27 special measure and those eligible for s.28 that were sent from the Magistrates Court to the pilot courts during the pilot period.³⁰ Police and CPS staff in the pilot court regions did the same for the s.28 cases that they dealt with during the pilot.
- Court staff in three comparison courts collected case numbers and basic monitoring data on the cases that were eligible for s.27 during the six month

²⁹ This is a practice that can help researchers to conduct interviews with otherwise hard to reach groups. This can assist in delivering diversity in participation and to give a clear signal to witnesses that their contribution is valued and relevant.

³⁰ The data collected by Leeds Crown Court may not cover the full period, with potentially some cases missing towards the end of October 2014.

period from June to November 2014.³¹ Court staff in all of the remaining courts in the wider court estate did so during the three month period from October 2014 to December 2014.

- The HMCTS Performance Analysis & Reporting (PAR) Team provided additional information on s.27 cases from the CREST (Crown Court) case management system, based on the returns covering October - December 2014.
- Additional timeliness data from the LIBRA (Magistrates Court) case management system for all s.27 and s.28 cases from the pilot courts, as well as s.27 cases in the wider court estate sent to Crown Courts from January to October 2014.

3.2 Limitations

The following general limitations should be noted when considering the findings of this study:

- As with all process evaluations, this one was not designed to provide robust evidence of impact. This process evaluation aims to aid understanding of how s.28 has been implemented and delivered and to identify factors which are perceived to have helped or hindered its effectiveness.
- The courts chosen for the pilot were selected because judges in those courts were supportive of the principles of s.28. They were not selected on the basis of representativeness of the court estate, and so the findings from this pilot may not be generalisable to all courts.
- S.28 witnesses are a limited and specific sub-set of s.27 witnesses. The s.28 witnesses may share similar characteristics to s.27 witnesses in the pilot, however the overall witness characteristics of the s.27 witnesses group may be different from the s.28 witnesses (see Fig. 1). The lack of direct match limits the accuracy of the comparison of s.27 and s.28 cases in the pilot courts. Nonetheless, these comparisons are used to help provide an indication of the potential effect of s.28, but differences found may not be replicated under any roll out.

In addition, the following specific limitations should be noted:

³¹ Only three months of data covering the period June to August 2014 was able to be used in this analysis.

Practitioner interviews

- Practitioner interviews were conducted with a sample of practitioners, and so the views expressed may not represent those of all practitioners involved in the pilot. Additionally, few CPS staff were interviewed due to difficulties securing participants, so this group's responses in particular may not represent all CPS practitioners.

Witness interviews

- Witness interviews were conducted with a small sample of witnesses, and so the views expressed may not represent those of all s.28 and s.27 witnesses who gave evidence during the pilot.
- Witnesses for interview were not selected by random sampling, due to issues with recruitment³² and so again these views may not be representative of all those who gave evidence during the pilot. The aim of this research however, was to map out a range of views and experiences.

Monitoring data

- The analysis presented in this report is based on 194 s.28 cases and 196 s.27 cases that went through the pilot courts during the pilot period. Due to the relatively small numbers and the way that the s.28 group was a limited and specific sub-set of s.27 cases, with the two groups not being directly matched on the basis of victim characteristics, the findings provide an indication of the possible effect of s.28 but may not be replicated under any roll out.
- All of the monitoring data collected from all courts by HMCTS court staff, the police and the CPS has been collected manually. Basic quality assurance checks were carried out, but there remains a risk that, as with any manually recorded data, there are possible errors with data entry and processing. It is not known if the collected data covers all cases and witnesses of interest – therefore, it is possible that an incomplete/partial picture has been provided.
- The limited data collection time-frame means that any seasonal differences cannot be accounted for in the analysis.

³² Witness Care Units took care not to contact witnesses for participation where there may be ethical or safeguarding concerns. Additionally, a high proportion of witnesses and parents/carers declined involvement as they felt it may upset the witness to take part.

- It should be noted that the HMCTS PAR Team data analysed in this report was supplied on 29th July 2015 – there can be a lag of up to one month while CREST is updated. Given the time lags with processing of CREST data, there is potential that the case data presented does not contain the most up-to-date status of all cases.

3.3 Pilot cases

Across the three pilot courts, a total of 194 s.28 cases were sent to the pilot courts during the pilot period (cases sent to the Crown Court from 30th December 2013 to end of October 2014). A similar number of s.27-only cases (196) which did not receive a s.28 direction were also sent to the pilot courts in this period. These cases had the following characteristics:

- Around three quarters (76%) of cases in the combined s.28/s.27 caseload in the pilot were sexual offence cases (see Table C.13 in Appendix C); 72% of s.28 cases and 81% of s.27 cases. For s.28, the next most prevalent offence types were theft, followed by violence, and for s.27 this was violence followed by theft.
- Nearly all (95%) of the cases in the combined s.28/ s.27 caseload in the pilot were single-defendant cases (Table C.14).
- Around three-fifths (58%) of cases in the combined s.28/s.27 caseload in the pilot were categorised as legally-aided (for the defendant) on CREST and around two-fifths (42%) were categorised as privately funded (Table C.15).

The remainder of the report sets out findings from the different strands of the process evaluation.

4. Practitioner Interviews

Awareness of the aims of Section 28

All of the practitioners interviewed had a good grasp of the aims of s.28. The key aims cited by nearly all participants were the requirement to shorten the length of time to cross-examination to help improve recall and to help reduce the distress experienced by witnesses when being cross-examined.

Communications and training

Nearly all of the participants reported that they received some communication about the pilot prior to implementation. Most practitioners interviewed felt that they received enough information. However, there was a general sense that the timeliness of key communications was a little last minute. Most of the practitioners interviewed reported a flurry of communications just before launch. Interviewees suggested there was little in the way of centrally provided training.³³ Instead, interviewees reported that most of the agencies produced their own awareness and training materials in-house (e.g. by adapting the pilot process maps and protocols) for further dissemination internally.

The ongoing communication between the Local Implementation Teams (LIT) and HM Courts and Tribunals Service was praised strongly by court staff in particular.

Scope

When the scope of the pilot was mentioned by practitioners in our sample, there was broad agreement that the scope definition was well pitched. However, some issues and suggestions were raised.

For some practitioners who commented on the scope, the scope definition was felt to be a little too prescriptive and could benefit from greater judicial discretion over who is able to receive s.28.³⁴ A police and defence representative cited examples of interfamilial sexual violence (common amongst the s.28 cases heard during the pilot period), where a young witness had been cross-examined many months before the trial but other witnesses in the family had not. It was noted this could create tension in the family in the lead up to trial. It could also lead to claims by the defence that witnesses were colluding with one another,

³³ Training that was centrally provided and mentioned included a demonstration of the IT equipment to court staff and a Vulnerable Witness training course for judges and conferences/meetings for Local Implementation Team (LIT) practitioners.

³⁴ Mentioned by one participant from each of the following: CPS, police, defence, Judge, intermediaries.

as witnesses are not permitted to divulge details of the cross-examination to anyone involved in the case prior to the trial. Similar examples were cited by a judge of siblings/friends falling either side of the age cut-off - in these cases there were calls for allowing judges to decide whether the parties could all receive s.28 cross-examinations at the same time.

It was emphasised strongly by a police representative that if s.28 were to be rolled-out more widely the scope definition needed to be limited to a subset of witnesses (rather than open to everyone) because of the level of resource required to implement s.28. Despite these issues, those who commented on the scope felt that the definition was broadly correct.

Early identification of Section 28 cases

There was widespread acknowledgment amongst all the practitioner groups interviewed³⁵ that (particularly at the start of the pilot) some witnesses who were eligible for the pilot were not being identified at a sufficiently early stage. Some felt that this could lead to delays in cross-examination, exclusion of some eligible witnesses from the pilot altogether and/or miscommunication between agencies and witnesses about the special measures that witnesses should expect to receive during cross-examination – the latter point is addressed further in the witness interviews (Chapter 5).

Various practitioners cited examples of eligible cases not being flagged by the police or CPS and some cases reached the Crown Court without being identified. For some of the practitioners in our sample, the failure to identify some s.28 cases early enough was a consequence of a lack of awareness of the pilot amongst some staff and, for others, a potential breakdown of cross-agency communication.

Lack of awareness

The majority of interviewees in management roles at the court, the police and a CPS staff member acknowledged that it was difficult to raise awareness of s.28 amongst all of the police and CPS staff who might come into contact with s.28 cases. This was less of an issue in specialist units who are accustomed to dealing with vulnerable witnesses, but was difficult for officers who were likely to come into contact with s.28 witnesses on an infrequent basis.

It was also noted by two (of the 11) police representatives interviewed that the s.28 message was slow to filter to police practitioners on the ground because of delayed communications

³⁵ Mentioned by 2 judges, 5 members of police staff, 2 members of CPS staff, 5 members of court staff, 1 defence advocate, 1 witness care officer and 1 intermediary.

from the centre about the start date of the pilot in the lead up to the launch. These police practitioners suggested that any wider roll-out would need to be accompanied by improved early communications to allow for sufficient awareness raising amongst the police.

Lack of cross-agency communication

Two of the officers from the specialist unit interviewed noted that there was an issue with the process for flagging s.28 eligible cases to the CPS and a degree of uncertainty about whether or not the witnesses identified as eligible were being taken forward for s.28 cross-examination by the CPS. They felt this was symptomatic of wider communication issues between the two agencies and they thought that this was a consequence of the CPS having too much work and too few staff.

Possible further barriers to early identification

The interviews revealed some further possible barriers to the early identification of eligible s.28 witnesses. For example, two members of police staff mentioned that there was a shortage of officers trained to undertake ABE interviews (a precursor to s.28) in some areas, and one member of court staff mentioned that there was a lack of ABE recording facilities in some areas. A member of court staff also cited London's transient population as a reason why officers might prefer to take an immediate written statement from the witness, rather than arrange an ABE interview for a later date and risk 'losing' the witness.³⁶ This may have implications for the roll out of s.28 as it may mean that witnesses who could be eligible for s.28 if they had completed an ABE interview may not be offered the provision due to factors such as the availability of training and facilities.

Despite these issues with early identification, it was acknowledged amongst representatives from the police, CPS, court staff and the judiciary that improvements had been made during the course of the pilot and some felt that things might improve further if and when s.28 became business as usual.

To try to counteract the problem of eligible witnesses missing out, the Local Implementation Teams, court staff and police force decision-makers reviewed records of upcoming cases. It was noted by court staff and police representatives in the interviews that it was easier to spot when a young witness had mistakenly fallen out of the system, but much less easy to identify vulnerable adults who should have been considered.

³⁶ Plotnikoff and Woolfson (2009) found that the rates of children making visually recorded statements (ABE) varied across the country, from 68% of all children interviewed in the Northwest to 43% of children in London and the Southeast.

Workload

The process

Appendix A and Figure A.1 set out the s.28 process.

It was noted by representatives from all of the practitioner groups interviewed that the s.28 process had the effect of expediting the timetable early on in the process, as well as a requirement for all parties to attend additional hearings and a stronger case management approach by judges.

Overall, there was a sense from across the practitioner groups involved that the expedited timescales were challenging but were just about achievable (with the exception of some of the police interviewees). It was noted by most practitioner groups, however, that non-s.28 cases needed to be de-prioritised to make sure that the expedited timetable for s.28 cases could be achieved.

The remainder of this section presents some of the key barriers that each practitioner group faced in trying to achieve the expedited s.28 timetable.

Police

Police investigations, case preparation and disclosure needed to be conducted at an earlier stage. Key sticking points for some police interviewees were meeting the expedited disclosure timetable and the lack of police resource.

A key feature of the accelerated timetable is the need for the police and CPS to obtain full disclosure of all material, including third party material, at an earlier point in time.³⁷ According to many of the police practitioners interviewed, the process for obtaining disclosure is protracted.³⁸

Police views on the accelerated time-scales for disclosure were to some degree mixed. One of the police officers interviewed pointed to the fact that the CPS would refuse to make a charging decision on sexual offence cases unless third party disclosure applications had been made beforehand – so in this sense these officers were already working to an accelerated timetable.

³⁷ The roles and responsibilities of all parties involved in s.28 are explained in Appendix A.

³⁸ The police – as disclosure officers – attend the offices of third party organisations to review the records (which can run into hundreds of pages) and take notes on the key elements that might need to be disclosed to the defence. If the material is not handed over voluntarily, the CPS may then need to issue a summons to the third party organisation for disclosure of that material.

...by the time we do our submissions, the case is 95 per cent ready. So as far as timescales are concerned, we do most of our work before we even give it to the CPS for a charging decision, because they won't accept it in any other way.

(Police)

Another police officer and a police case progression worker however, considered the expedited timetable for disclosure to be unrealistic.

A number of other difficulties relating to disclosure were identified by the police. For example, obtaining full disclosure was more difficult if a child witness is subject to ongoing Family Court proceedings - if something relevant emerges in the Family Court, the CPS are required to apply for disclosure under a different legal framework and this can add to the timeline for full disclosure. The 35-day deadline was also considered by one police practitioner to be completely unfeasible in the increasing number of cases that require technical/expert evidence – for example, in cases that require a computer to be taken away and examined.

Despite the concerns held by the police, third party disclosure did not appear to be a substantial problem for CPS prosecutors, defence advocates or judges. Other practitioners were aware of the pressures facing the police, but there was a sense that things had improved and would continue to do so over time:

For the police of course at the moment, there's a pressure on them because they're having to look at disclosure from an early stage. My own view is, of course, that's something which will work through as time goes on, because whilst at the moment they're having to do disclosure on conventional cases and section 28 at the same time, in a few months' time the cases that are today's section 28, which would, under the old system, have been tomorrow's trial in six months time won't be. So that will all catch up. (Judge)

Five of the police practitioners interviewed suggested that the forces were not sufficiently resourced to manage the expedited s.28 cases in addition to their existing workload.

You have one officer that might have 20 cases, of which ten might be section 28 cases. All of them have their own timescales and their own challenges, and different things. You have a real juggling process that each of the officers in the case have to do to progress all the section 28s and to progress the section 27s at the same time. (Police)

CPS

The expedited s.28 process requires the CPS to front-load some of their processes – e.g. they (along with the police) are required to fast-track the disclosure process, provide charging advice within 7 days of receipt of a submission from the police and produce written transcripts much sooner than for conventional trials.

The two CPS prosecutors in our sample seemed generally content that the s.28 timescales were manageable. It was noted however, that there could be some knock on effects on the attention that they can pay to other cases.

The key challenges faced by the CPS seem to involve the earlier timescales for transcription of ABE interviews (this was raised as a potential problem facing any wider roll-out by a few CPS staff and court staff) as well as the provision of charging advice within the expedited 7 day deadline.

The challenges of obtaining third party disclosure for non-sexual offence cases were also raised, but (mirroring the view of one of the police officers) there was a sense that the CPS third party disclosure processes were suitable for disclosure of sexual offence cases.

Defence

As with the police and CPS, defence advocates were required to complete their case preparation quicker in advance of the expedited cross-examination. Whilst the expedited timings appear to be achievable to the defence advocates interviewed, they did outline a number of challenges associated with fully preparing their cases on time.

A key challenge was the difficulty in obtaining instructions from defendants at an earlier point. A defence advocate characterised defendants as either “*burying their heads in the sand*”, “*difficult to track down*” or “*not articulate enough*” to provide sufficient information – so there was a need to dedicate additional time to build rapport at the very outset of cases. One defence advocate also observed that they needed to dedicate additional time up-front to agreeing a plea with defendants involved in s.28 cases, because the credit for a guilty plea is lost at cross-examination for s.28 cases.

The requirement to formulate cross-examination questions at a much earlier stage (i.e. prior to the Ground Rules Hearing), as well as write them out in full and obtain clearance on them from intermediaries and judges was also felt by a defence advocate to add to the burden.

One advocate also raised concerns about the remuneration process for s.28 cases. In s.28 cases, judges require trial advocates (as opposed to solicitors' representatives) to attend the Preliminary Hearings because those with full knowledge of the case are required to provide detailed updates on the case, and agree to case management orders and attendance at all future hearings. Given that legally-aided defence lawyers are required to charge one standard fee per case, there was a feeling that senior attendance at these hearings was eating into profit margins.

The requirement to prepare for and attend the s.28 cross-examination and the trial itself also added to the sense that defence lawyers were required to do more for less in s.28 cases. One defence lawyer spoke of the need to prepare for a trial twice (i.e. first at the s.28 cross-examination and then at the subsequent trial).

You have to remember that that prep that I do at an early stage to draft the questions, yes, it's done, it's in the bag, it's videoed, but realistically the trial is in eight months' time after that. I've dealt with another 20 trials of similar allegations in that time, I cannot rely on my prep from an early stage, I have to re-prepare the case, so you're prepping a trial twice. (Defence)

Listing teams

Some of the challenges for listing teams included:

- overcoming the logistical difficulties of scheduling additional hearings in already booked-up court rooms,
- ensuring that the limited number of s.28 judges were able to attend the hearings and
- making sure that cross-examinations were scheduled in the mornings when child witnesses were fresh.

According to listing staff, the difficulties were compounded by the need to make sure that the same judge presided over the Ground Rules Hearing, the cross-examination and wherever possible the trial itself, and that senior parties from all of the agencies involved were able to attend the hearings that were pre-set at the Preliminary Hearing. To add to the difficulties, court staff noted that it became apparent at a relatively late stage that the s.28 equipment meant that non-s.28 trials requiring a video-link could not be heard in the court rooms containing the s.28 technology, which made listing non-s.28 trials more complicated.

Despite these issues, it was noted by the listing teams in our sample that these are the types of puzzles that listing teams are accustomed to solving – it was reported that no major changes needed to be made to the listing process and the listing of s.28 cases was considered largely successful during the pilot.

Judges

According to the judges and court staff interviewed, s.28 requires judges to attend more (and longer hearings) at the outset of cases. These practitioners also noted that judges needed to take a more robust approach to case management to make sure that all parties are in a position to deliver their work in time for the expedited cross-examination hearing.

Key challenges reported by the Judiciary included making themselves available for the additional hearings. In particular, the cross-examinations needed to be fitted in with their ongoing non-s.28 case work and preferably conducted first thing in the morning, when young witnesses were at their freshest and before the judges' other trials had begun. This was made more difficult by the fact that the limited number of s.28 judges in each court were often in the middle of long and complex non-s.28 cases. In addition, judges reported difficulties with obtaining the right representation and necessary updates on the progress of cases from the various agencies at the Preliminary Hearing.

Despite these challenges, many of the judges in the sample observed that front-loading the work on s.28 cases had a positive effect on the amount of work required towards the back end, particularly at the cross-examination and trial stage. Specifically, it was noted by members from most of the practitioner groups interviewed³⁹ that s.28 cross-examinations tended to run more smoothly than cross-examinations in non-s.28 cases, with less need for judges to interject in the proceedings (likely to be a result of orders made at the Ground Rules Hearings). In addition, s.28 trials were described as shorter and easier to manage⁴⁰ – for example, because witnesses' were absent from these trials and because full disclosure had been undertaken at a much earlier stage.

Some practitioners also suggested that a high proportion of s.28 cases had resulted in early guilty pleas (EGP) (it was suggested that this was because evidence was being gathered and disclosed to defendants sooner) and that this negated the need for a subsequent trial

³⁹ Mentioned by 3 judges, 2 police representatives, 1 CPS representative, 2 members of court staff and a Witness Care Officer.

⁴⁰ Mentioned by 5 judges, 1 defence representative, 1 CPS representative and 2 members of court staff.

altogether. This perception was supported by findings from data collection in the pilot courts that more s.28 cases had resulted in early guilty pleas (see Chapter 6 for more details).

Intermediaries

Some of the intermediaries, defence practitioners and a judge interviewed noted that intermediaries played a more central role at the Ground Rules Hearing than in s.27 Ground Rules Hearings. Their advice on the communications needs of witnesses was considered in detail as a matter of course and their input during the line-by-line review of defence advocates' cross-examination was valued by nearly all of the practitioners interviewed.

Given their level of input and the strong case management at the Ground Rules Hearing, intermediaries (like the judges) felt that they had less work to do at the cross-examinations themselves.

It was noted by some practitioners⁴¹ however, from most of the groups interviewed that there was a shortage of intermediaries. For some, it was felt that the delay between requesting and securing an intermediary could hinder efforts to adhere to the expedited s.28 timescales.

Witness Service and Witness Care Officers

The member of Witness Service staff interviewed, and the witness care officer interviewed noted that they performed much the same role as they do in non-s.28 cases.

Court clerks

Court clerks reported that they performed much the same role as they do in non-s.28 cases. They also helped to monitor the s.28 caseload, including helping to identify mis-identified cases. In addition, they were also briefed and on hand to assist with operation of the equipment (in case the ushers were tied up with other business).

Court ushers

Court ushers reported that they were required to operate the s.28 video-recording and playback equipment. Court staff noted that ushers took on this responsibility on top of their existing commitments. The ushers said that they were happy to do so, but it took up a fair amount of their time.⁴²

⁴¹ Mentioned by a judge, a CPS representative, a member of police force staff and 2 members of court staff.

⁴² Ushers would need to: Be available to set-up, test and be on hand to operate the recording equipment during court familiarisation visits and cross-examination, facilitate the transfer of audio visual files to the IT provider (AMV) for burning on to DVDs and set up and operate the playback technology at trial.

Overall, it was felt by the court staff interviewed that the equipment was relatively straightforward to use. Two members of court staff were required to be on hand during recording; one in the recording room with the witness, the other in the court-room with the judge.

The cross-examination process

As discussed, an aim of early cross-examination is to improve the experience for witnesses. The potential benefits are twofold: i) making it easier for vulnerable/intimidated witnesses to recall/recount events clearly by reducing the length of time to cross-examination and ii) improving the experience for witnesses (e.g. less stressful/traumatic/accessing the full range of support earlier).

Improved recall

Practitioners from all of the groups interviewed noted that s.28 enabled witnesses to be cross-examined at an earlier point in time. This was also found in the monitoring data collected– this is discussed further in Chapter 6. Amongst these practitioners, there was broad agreement that witnesses would be better able to recall evidence.

It was noted by some intermediaries and police representatives that bringing the cross-examination nearer to the date of complaint would make it easier for child witnesses in particular to remember events. It was, however, not possible for the practitioners to gauge the extent to which witnesses were able to better recall events – the reason consistently cited for this was that every witness and case is different.

Improved experience

Most of the practitioners interviewed who attended s.28 cross-examinations⁴³ were of the opinion that the s.28 process was reducing the level of distress/trauma suffered by witnesses. Two members of police staff, two intermediaries and a Judge however, believed that s.28 cross-examinations were no less stressful for witnesses than being cross-examined at court.

The majority of practitioners who attended cross-examinations⁴⁴ were of the view that defence lawyer questioning in s.28 cross-examinations was more witness-friendly (more “focussed, relevant and pared down”) than in conventional trials. The reason given for this was the level of scrutiny that defence questions received in the lead up to the

⁴³ The roles and responsibilities of all parties involved in s.28 are explained in Appendix A.

⁴⁴ Mentioned by 14 of 22 practitioners who attended cross-examinations.

cross-examination. Specifically, the scrutiny during the Ground Rules Hearings that took place up to 1 week before the cross-examination itself (see Appendix A).

Oh, what is quite remarkable and very marked indeed is that the cross-examinations, once you have had the discussion the day before and once they don't have anything else to worry about, the cross-examinations are much shorter – much, much shorter – because they are forced to focus on what is needed, what is relevant, what focuses on the issues (Judge)

There was a sense that questioning styles had improved in recent years (with the publication of the Advocate's Gateway⁴⁵ which includes toolkits on the role of the intermediary and best practice in questioning vulnerable witnesses). Many participants felt however, that the questions asked in s.28 hearings were an improvement on those that were put to vulnerable witnesses in conventional trials.

I would say that they are far less combative [in s.28 cases], but in s.27 cases I suspect they are possibly less combative than they used to be because there's an expectation, with child victims in particular, that this isn't trial by ordeal. (CPS)

It should be noted that an intermediary felt this was a product of it being a pilot (closer scrutiny) that may not translate during roll-out. The same intermediary also felt that the implementation of s.28 may have a positive impact on cross-examinations and procedures in conventional trials, which may reduce the difference in experience between s.27 and s.28 witnesses.

Practitioners who commented on witness waiting times all agreed that witnesses were benefiting from the pre-set listing times of cross-examination hearings. In conventional trials witnesses are informed of their anticipated appearance date and time for giving evidence, but there are often delays and adjournments that mean the witness is left waiting at the court for a period of time.

In contrast, practitioners agreed that the start times for the s.28 hearings in the pilot were nearly always kept to – and that witnesses were able to be in and out in the times that were agreed beforehand. It was felt that this, coupled with the scheduling of the hearings in the morning (when young children are at their freshest), improved the experience of

⁴⁵ <http://www.theadvocatesgateway.org/toolkits>

cross-examination. Improved experience of cross-examination may also mean that the evidence given is of higher quality (see Chapter 2.2).

Some of the judges also expressed the view that the cross-examination was the final input required of witnesses - even in a case that went to a re-trial, witnesses would not need to return because their video could simply be played again.

Despite the improvements in terms of question wording and listing, some barriers to a positive witness experience were cited. Firstly, witnesses are still required to be in the court building at the same time as the defendant.⁴⁶ There was, therefore, a call by some practitioners⁴⁷ for any roll-out of s.28 to include an option for witnesses to be cross-examined in a remote location outside the court estate. It was noted by some of the judges however, that remote links would pose practical difficulties; for example how exhibits would be shown to witnesses and how they would meet the parties involved, which is considered to be good practice. Witnesses had mixed views on these suggestions, with some feeling that attending court gave the evidence the gravitas it deserved, whilst others thought a remote location would be a useful option. This is discussed in further detail in Chapter 5.

Secondly, some practitioners across most of the groups⁴⁸ believed that any overall reduction in distress would be lessened by the fact that the trial is still yet to be completed. Particularly for older witnesses, there could be:

- a sense of a lack of closure as the trial “hangs over them”
- heightened anxiety about how the defendant might view the evidence and
- (as cited previously) further anxiety for those with family members/peers who are also witnesses but are out of scope of the pilot.

⁴⁶ Mentioned by 2 judges, 2 intermediaries, 3 members of court staff and a police representative.

⁴⁷ Mentioned by 6 practitioners.

⁴⁸ Mentioned by 2 police representatives and an interviewee from each of the following groups: defence, CPS, intermediaries.

Quality of evidence

Some of the practitioners⁴⁹ thought that the evidence provided by s.28 witnesses was likely to be of higher quality than for witnesses in conventional trials.

Oh, the quality of the evidence is significantly improved, because we have vetted and discussed the questions to ensure that there's no irrelevant material, that there's no repetition and people are not being cross-examined unnecessarily. The whole process is vastly different and vastly improved. (Judge)

There were some dissenting views however, particularly amongst defence advocates.⁵⁰ They argued that the pre-set questioning limited their ability to react to answers given by witnesses and to their body language, and explore lines of enquiry that would be of potential benefit to the interests of justice.

It was, however, noted by a defence lawyer that a pragmatic approach by judges meant that advocates were still able to ask appropriate and sensitively worded follow-up questions.

There were conflicting views amongst practitioners on the possible implications of s.28 on jury decision-making. Some⁵¹ felt that s.28 evidence may be too remote, and therefore could disadvantage the prosecution's case.

Six practitioners however, noted that there had been a high number of convictions in s.28 cases and, in their view, the decisions to convict in those cases had been 'right'. In addition, some felt that juries nowadays were accustomed to watching evidence on a TV screen.

Accommodation

A number of practitioners⁵² interviewed raised concerns about the live link rooms in which the cross-examination recordings take place. For example, some practitioners felt that the rooms were not large enough to accommodate all of the parties who needed to be present. In addition, some suggested that the rooms were uncomfortable (e.g. due to issues with the lighting or heating/air-conditioning) or not sufficiently child-friendly (e.g. in terms of décor and furniture).

⁴⁹ Mentioned by 4 judges, 1 defence advocate and an intermediary.

⁵⁰ Mentioned by 2 of the three defence advocates interviewed and one judge.

⁵¹ Mentioned by 3 judges and a defence advocate.

⁵² Mentioned by seven practitioners.

The IT Solution

A number of issues were raised with the technology. An assessment of the IT solution used in the pilot is outside the scope of this evaluation and was conducted separately. A number of the findings from this assessment have been or are in the process of being addressed. The main points from the practitioner interviews, however, are included here.

As mentioned previously, there were some issues with communications about the IT solution at the outset of the pilot. For example, court staff were unaware that the s.28 equipment would mean the live link equipment was unable to be used for non s.28 trials, which caused problems when allocating which rooms would house the equipment and caused issues with the listing of non-s.28 trials. Issues were also raised with regard to the inability to play CCTV footage at the same time as recording the cross-examination. There was also mention of a possible skills gap in operating/fixing malfunctioning equipment. During trials, it also became apparent that a member of staff was needed to run the playback equipment at all times – because of the security settings on all judicial laptops, screensavers would be activated every few minutes.

Most of the practitioners⁵³ (and particularly the judges) mentioned that the playback solution was not adequate. In particular, the amount of screen dedicated to the witness was felt to be inadequate for the jury to read facial expressions and body language of the witness. This has since been addressed. The jury's ability to see the evidence clearly was also felt to be diminished by the location and screen sizes of the TV screens in many of the court rooms. On this point, there were some conflicting reports of what an ideal solution might look like – some felt that as large a screen as possible was needed to accurately depict the proceedings in the live link room, while others felt "cinema sized" screens were an intrusion on witness privacy, and instead, smaller screen(s) in close proximity to jurors were more appropriate. Issues with technology were also reported by witnesses, and these are discussed in Chapter 5.

Sound quality was by and large felt to be acceptable by judges and court staff. However, in some cases it was reported that softly-spoken witnesses could not be heard. There were reports of issues with microphones being turned down and levels of feedback on some recordings.

⁵³ Mentioned by 24 interviewees.

Practitioner interviews: summary

- Interviews with the practitioners suggest that some eligible witnesses are not being identified early enough, and that there were some concerns, especially among the police, about the resource required.
- There were concerns about the expedited timeframes, and the resource that was needed to meet these. Practitioners felt that other cases had to be de-prioritised as a result of the s.28 timeframes.
- Practitioners felt that cross-examination took place at an earlier point in time than in conventional trials; and that there were benefits in terms of the witnesses' ability to recall events compared to s.27 cases. Participants suggested that the experience was improved by the questioning styles adopted, the length of cross-examinations and the way s.28 cross-examinations were listed.
- Some practitioners also thought that the quality of evidence was higher in s.28 trials than conventional trials, although a minority felt s.28 questioning protocols limited their ability to react to answers given by witnesses. Most of the practitioners who attended s.28 cross-examinations were of the opinion that the s.28 process was reducing the level of distress/trauma suffered by witnesses.

The following chapter presents findings from interviews with s.27 and s.28 witnesses, and their parents or carers to explore witnesses' views and experiences of s.28 and how this compares with s.27 witnesses.

5. Witness interviews

As part of the evaluation, NatCen Social Research⁵⁴ was commissioned to conduct qualitative interviews with witnesses who received s.28, as well as with comparable witnesses who received the s.27 special measure only. Those witnesses who had received a s.27 direction were considered a fit for purpose comparison group as witnesses in the pilot are only eligible for a direction under s.28 if they have first received a s.27 direction. S.28 witnesses are therefore a sub-set of s.27 witnesses and so may share similar characteristics, although the overall witness characteristics of the s.27 witnesses group may be different from the s.28 witnesses (see Fig. 1). The s.27 witnesses had given evidence in separate cases heard in the pilot courts or in three other crown courts: Sheffield, Manchester Crown Square and Wood Green in London. These courts were selected as ‘comparison courts’ given their proximity to the pilot courts in terms of geographical region and case volumes. These interviews with prosecution witnesses were conducted between March and August 2015, as this was after both the trial and post-trial appeal period had passed in order not to interfere with the process.

The qualitative research with witnesses aimed to:

- explore witnesses’ views and experiences of s.28;
- explore the potential for s.28 to make it easier for witnesses to recall/recount events;
- compare the views and experiences of s.28 witnesses with s.27 witnesses.

Expectations of giving evidence

The research participants reported that the flow of information about going to court and about giving evidence was patchy, with no provision of information in different formats or in age or ability-appropriate versions. Informal sources, including family members, were cited as providing most initial information about giving evidence in court. Police and Witness Care also gave some information on what to expect, but this varied with individual officers and local practice.

Where information was provided, it was considered helpful, especially in relation to what would happen on the day: where the witness would be; what roles the different people had in court; and how to address the judge and advocates. Where information had not been

⁵⁴ NatCen are an independent, not for profit research organisation.

provided, participants said information should tell witnesses what to expect – where they would be, and what would happen – but also emphasised that it should prepare witnesses for how they would be spoken to by the defence advocate(s). There was no difference in the views of s.28 and s.27 witnesses in this regard, other than that s.27 witnesses placed greater emphasis on the need to prepare witnesses for negative treatment by defence advocates. The importance of having clear information on being cross-examined has been noted in research and practice guidance on appropriate advice and preparation for young and vulnerable witnesses for many years.⁵⁵ This can include informing witnesses about what to expect when being questioned and the ‘rules’ of questioning – for example that they are entitled to contradict someone suggesting an answer they believe is incorrect, and to say if they do not understand.⁵⁶

Decision-making – whether to give evidence

Witnesses’ understanding of their role in the prosecution appeared to derive mostly from family, friends and television. Police and witness care officers communicated little about the decision-making process which led witnesses to give evidence. The interviews did not identify differences between s.28 and s.27 witnesses in their attitude to giving evidence nor their information about it.

Decision-making – how to give evidence

There was a lack of clarity for some s.28 witnesses and parents/carers of s.28 witnesses as to whether the witness had given their evidence before or during the trial. Key factors which would help people to determine this – such as whether or not a jury was present – were not observed as the witness was in the live link room and their parents/carers were in the waiting room. A number of delays and alterations to dates also made it difficult for participants to recall if there was a gap between the witness giving their evidence and the trial being underway. Furthermore, the s.28 cross-examinations were still held many months or almost a year after each witness had their ABE interview, and so they had no sense of the cross-examination being ‘early’.

⁵⁵ Plotnikoff, J. and Woolfson, R. (1999) *Preparing Young Witnesses for Court: A Handbook for Young Witness Supporters (Young Witness Pack)*. London: NSPCC; Victim Support (2011) *Left in the dark: Why victims of crime need to be kept informed*. London: Victim Support; Beckett, H. and Warrington, C. (2015) *Making Justice Work: Experiences of criminal justice for children and young people affected by sexual exploitation as victims and witnesses*. Luton: University of Bedfordshire.

⁵⁶ Plotnikoff and Woolfson (2015).

This observation reinforces the need for clear communication with witnesses and parents /carers about giving evidence. As one objective for the use of s.28 is to reduce the time a witness has to wait to give evidence, it would appear helpful to inform the witness of this quicker process where it does occur. The benefit of having earlier cross-examination was appreciated even by those who were not sure if they had received it:

[giving evidence is] *probably the sooner the better so you don't forget what you said* (s.28 young witness).

Where s.28 witnesses or parents/carers were aware that the witness had received earlier cross-examination, the decision for it to be pre-recorded was said to be made by police with little discussion with the witness, and its purpose may have been confused with reasons for using the live link.

It was the police decided on that. One because he was autistic, two because of the nature of the case and three because he was very scared of seeing the defendants again. (Parent/carer of s.28 witness with additional needs)

The option of waiting to give evidence during the trial was not discussed as an alternative by those who informed s.28 witnesses or parents/carers about the process of giving evidence. The fact that cross-examination would be held earlier than the trial however, was seen as an advantage, and so participants had not queried the police in cases when s.28 was proposed. Nevertheless, presenting witnesses with the decision that they will be cross-examined early does not enable witnesses to give fully informed consent over how they are cross-examined, especially as it has implications for subsequent choices – such as not being able to give evidence in the courtroom, or to use a screen (even in conjunction with the live link).⁵⁷

⁵⁷ It is for the Court to decide whether to issue any special measures direction (including section 28) exercising their discretion under the 1999 Act. In determining whether or not any particular special measure (including s28 direction) would likely improve or maximise the quality of the evidence given by the witness, the Court must consider all the circumstances of the case including any views expressed by the witness.

Preparation for giving evidence

Being kept informed

The interviews highlighted the importance to witnesses of clear, sustained communication with them in the period between being engaged as a witness and being cross-examined. Participants' accounts indicated that the flow of information can vary greatly. Examples of good practice included police or Witness Care officers maintaining contact even where there was nothing specific to update – ensuring that witnesses and their families understood why progress was slow. Examples of poor practice included no or little contact between the ABE interview and announcement of the court date, leaving witnesses with the impression that they did not matter, or mattered only in relation to the metrics of the case (“*their numbers*”). Participants considered that a minimal level of ongoing contact, such as a brief call every fortnight or so, would be sufficient for witnesses to feel informed. The experience of s.28 and s.27 witnesses were comparable in this regard as good and poor practice was recalled by both groups.

Visiting court

Visiting the court before the day of the cross-examination was highly valued by witnesses who had visited, and recommended for other witnesses even by those who had not visited. Specifically, visiting was seen as preparing witnesses for ‘the environment’ in which they would give evidence, providing some familiarity with the characteristics of a crown court and showing where they would enter, wait and give their evidence. Although visits were valued, they did not provide a chance for witnesses to ‘try out’ any of the equipment or to see them in operation,⁵⁸ nor was it explained that they could use a screen in combination with live link – to avoid being seen by defendants – although these opportunities and explanations are good practice, enabling witnesses to give fully informed consent to the use of special measures.⁵⁹ Not all s.28 witnesses were offered a visit to court, and others had not taken the offer, but their accounts also made clear the real advantages of seeing the court before the cross-examination. Witnesses recommended that court visits are held around a week before giving evidence.

⁵⁸ It is considered good practice to give witnesses the opportunity to practice using the technology, being shown the room is not enough. <https://www.justice.gov.uk/courts/procedure-rules/criminal/practice-direction/2015/crim-practice-directions-l-general-matters-2015.pdf>

⁵⁹ As is now made clear in the Criminal Practice Directions 2015, 18B.4 (www.judiciary.gov.uk/wp-content/uploads/2015/09/crim-pd-2015.pdf).

Specialist support

Where witnesses had been referred to and engaged with specialist support, including the Court Based Witness Service, these services could be identified as playing an important role in providing information and updates. Court Based Witness Service officers could become the key support and communication link for a witness, providing reassurance and core information in preparing to give evidence.⁶⁰ There were also witnesses, however, who did not recall being told about the Court Based Witness Service or other specialist support and witnesses who chose not to engage, viewing their family as providing all the support they needed. Both groups included witnesses who had poor or patchy contact from police and Witness Care, indicating that both the offer of specialist support and its advantages (not least updates about progress in the case) should be clearly communicated to young and vulnerable witnesses and their families.

Information about the availability and purpose of counselling or pre-trial therapy was also found to be patchy and in some cases conflicted directly with police and CPS guidance.⁶¹ There was a specific misunderstanding, and concern, that witnesses would have to talk about what they had experienced/witnessed. Information should be clear that the facts of a case will not be the focus or indeed may not be discussed at all, as this may reassure witnesses. For s.28 witnesses, information and providers should also be clear that these limitations will continue after cross-examination until the trial is completed. Both s.28 and s.27 witnesses recommended that others have a chance for counselling, even where they were not offered it themselves, did not take it up or did not continue with it.

Going to court

Delays

A key aim of the s.28 provision is to reduce delays with cross-examination. The interviews found however, that delays arose for both s.27 and s.28 witnesses. This differs from the views of practitioners about delays. Witnesses and their parents/carers said that cross-examination dates had been re-advised in both s.27 and s.28 cases, including at short notice. In s.28 cases, witnesses reported in interviews that delays were caused by defendants' availability; in s.27 cases there was a wider set of reasons including judges' schedules.

⁶⁰ Note that Citizens Advice has been commissioned to provide this service for adults since April 2015, but in some areas other independent organisations will provide a service for young witnesses; Victim Support also provides online information, including representation of a court and live link room (<http://www.youandco.org.uk/>).

⁶¹ The Crown Prosecution Service is currently reviewing its guidance on pre-trial therapy; CPS; (2001) Provision of therapy for child witnesses prior to a criminal trial – Practice guidance. London: CPS; CPS (2002) Provision of therapy for vulnerable or intimidated adult witnesses prior to a criminal trial – Practice guidance. London.

Location

All witnesses interviewed or described by parents/carers gave their evidence in the court building, whether via video link or behind a screen in the court room. There is some provision for witnesses to be cross-examined remotely, but the s.28 pilot did not include this option and the s.27 witnesses were selected to be comparable in having attended court. Witnesses' views on whether it would be preferable to give evidence from non-court venues varied. There was a view that attending court gave witnesses' evidence the gravitas it deserved. Both s.28 and s.27 witnesses however, highlighted advantages of convenience and security, in not having to travel so far and knowing that defendants and their supporters would not be in the building or its vicinity.

Young s.28 witnesses and the parents/carers of s.28 and s.27 witnesses also saw court as a daunting, unsettling environment for young witnesses or those with learning disabilities. They saw the advantage of being able to give evidence from somewhere less imposing, with far fewer people around and none in wigs or gowns. The experiences of attending and waiting in court reinforced these views, with incidents of defendants being seen by the witness or their supporters approaching the witness. This supports the views of some practitioners that giving evidence from a remote location may be a beneficial option for some witnesses.

Waiting

Waiting times appeared to be considerably shorter for s.28 than s.27 witnesses, by several hours. S.27 witnesses had been delayed by procedural aspects of the trial (e.g. jury confirmation) which did not affect s.28 witnesses. The experience of prolonged waiting, for over a day in one case, had given s.27 witnesses a sense that they were rather '*out of sight, out of mind*' and in the view of a parent/carer, added substantially to young witnesses' sense of stress.

Nevertheless, even s.28 witnesses could be unsettled by waiting in the company of other witnesses and overhearing their emotional testimony as they gave evidence via live link, although it has been recommended that live link rooms should be soundproof.⁶²

Witnesses made clear the importance of having a relative waiting with them, both for the company whilst waiting and the comfort of knowing they would be '*just there*' when the cross-examination ended.

⁶² Plotnikoff, J. and Woolfson, R. (2009) *Measuring up: Evaluating implementation of Government commitments to young witnesses in criminal proceedings*. London: NSPCC.

Cross-examination procedure

Watching the ABE interview

The process of cross-examination differed depending on whether a witness was having pre-recorded cross-examination or not. S.28 witnesses were called directly to be cross-examined whereas some s.27 witnesses had to watch the recording of their ABE interview despite recent guidance and practice for vulnerable witnesses stating that they should not have to watch their ABE with the jury.⁶³ Witnesses in both groups had already seen their ABE recording in the fortnight before being cross-examined. Seeing it again was widely regarded as unpleasant, even traumatic, but helpful in terms of refreshing memories. The fact that many months passed between the ABE and the cross-examination for both s.28 and s.27 witnesses meant the interviews found no difference in how fresh their memories were; both groups considered them patchy.

Meeting the judge and advocates

All witnesses met at least the prosecution advocate whilst waiting to be cross-examined, in line with CPS guidance.⁶⁴ Witnesses from both groups also met the defence advocate(s) and some s.28 witnesses met the judge (optional for judges, but considered potentially useful in gaining a sense of the witness' level of communication).⁶⁵ The impact of these meetings varied depending on the professionals' manner. Where they were rushed, arrived all at once or spoke with little apparent regard for the witness, the visits could undermine witnesses' composure as they went to give evidence.

I saw him all of five minutes... all mine did was come in, sit opposite me and say 'Which is [my name]?' – yeah – so I said 'I am', and he said 'Is there anything you want to ask me?' Well I was just ready to go into the inter-link room so I said 'Well, not that I can think of' and he stood up and walked out. (s.27 adult witness)

Where visits were brief but well-paced, with opportunity for the witness to ask questions and fully ascertain who was performing which role, they were considered positive.

⁶³ Criminal Practice Directions 2015, 18C.3 (ibid.).

⁶⁴ See for example, CPS (2011) *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures*. London: CPS; CPS (2006) *Bar/CPS Standard for Communication between Victim, Witness and the Prosecuting Advocate*. London: CPS

⁶⁵ Judicial Office (2013) *Equal Treatment Bench Book: Section 5 Children and Vulnerable Adults*. London: Judicial Office (www.judiciary.gov.uk/publications/equal-treatment-bench-book/).

I think it was good the way they came and introduced themselves, it broke the ice a little bit... They all came in at once and told me who was who which made you relax a bit more because you knew who they were ... They asked me if I wanted to ask anything but I didn't have anything to ask because they'd explained everything to me that was going to happen to me like over the video.

(s.28 young witness)

Use of video link and screens

Witnesses gave evidence via video link (in s.28 and s.27 cases) or from behind a screen in the courtroom (in s.27 cases). It had not been explained to the s.27 witnesses interviewed that they could use a screen in the live link room. Both measures were valued because they meant the witness did not have to see the defendant(s); the screen was valued for protecting the witness' identity, and live link was seen as advantageous as it provided physical distance from defendants. Having a choice about how to give evidence was valued although this was not possible for s.28 witnesses in the pilot. It may be useful to consider offering s.28 witnesses the option of having the cross-examination screen shielded from defendants.

Although these special measures were considered appropriate, there were technical complications with both. Some witnesses saw defendants, having been assured this would not happen. Another witness had to adjust a video link screen following the judge's instruction as the usher could not. Half the witnesses interviewed reported some form of technical hitch with the equipment. This supports the evidence reported by practitioners of technological issues. Although the issues experienced by witnesses and practitioners were different, they indicate the technological solution would need further consideration if the pilot is to be rolled out.

Presence of intermediaries, ushers and advocates

Witnesses were accompanied to the courtroom or in the live link room by ushers and in some cases also by registered intermediaries or independent advocates. The ushers' role was understood as being to keep the process running smoothly. Their presence was viewed neutrally, but did not appear to prevent or address the technical failings noted above.

The presence of intermediaries or advocates was viewed as having a positive bearing on witnesses' overall experience. Registered Intermediaries are one of the special measures⁶⁶ and are used throughout the prosecution process to facilitate witness communication with

⁶⁶ Section 29 of the Youth Justice and Criminal Evidence Act 1999.

those seeking to question them. In this research they were engaged for some, but not all, of the witnesses who were identified as having learning disabilities or related additional needs. The level and form of their contribution varied but was positively received by witnesses and those supporting them, whether the witness had s.28 or only s.27. Having contact with the Registered Intermediary over the course of the investigation and into the cross-examination was highly regarded, where it had occurred.

Young and vulnerable witnesses may also be accompanied by independent advocates, where they are available (including those focused on supporting young people and victims of sexual violence or domestic violence). Courts vary in whether they allow advocates to sit with witnesses during cross-examination, but there is a special measure for witnesses using live link to specify someone to accompany them whilst giving evidence.⁶⁷ Witnesses were not aware of this provision, and had mixed views as to whether an advocate would enhance the experience. Few had heard of them but, when described, such support was thought to be relevant for especially young witnesses. Those who had received support from an advocate however, found the support reassuring, despite describing their overall experience of giving evidence at court as negative.

Cross-examination experience

This section summarises the witnesses' experiences of the cross-examination itself and the witnesses' emotions throughout the cross-examination experience. It concludes with their reflections on giving evidence at all, and specifically through the pre-recorded cross-examination.

Defence advocates

Whether having a s.28 pre-recorded cross-examination or giving evidence during a trial, witnesses' primarily evaluated their experience of cross-examination in relation to how the defence advocate(s) dealt with them. There was a spectrum of experiences, reflected in references to defence advocates' manner as 'pleasant', 'straightforward' or 'unpleasant'. The experiences of s.28 and s.27 witnesses were clustered towards opposite ends of this spectrum, with witnesses who had been pre-recorded expressing views that were more positive than those who had not. This may indicate that defence advocates may be more accommodating of young and vulnerable witnesses' interests in the absence of a jury.

⁶⁷ Section 102 of the Coroners and Justice Act 2009.

Positive descriptions of defence advocate manner

Witnesses who described defence advocates in the most positive terms recalled them as 'really nice' or 'lovely'. This did not prevent the witnesses from identifying the advocates' purpose as being to challenge their evidence and prioritise the defendant(s)' interests but it did mean that these witnesses felt they had been properly heard. Only s.28 witnesses spoke about the advocates in these especially positive terms. These included s.28 witnesses giving evidence in cases with multiple defence advocates, who described the questioning as appropriate or 'easy'. One recalled the defence advocates as being "really nice" to him, whilst another said they did not behave as if they were against the witness.

They didn't rush me or anything, they said I could take as long as I want, kept asking me do I need a break... the way they said it, they didn't seem arrogant or something or aggressive... they were all perfectly clear... I thought they was gonna be dead funny and arrogant but they were nice. (s.28 young witness)

Neutral descriptions of defence advocate manner

Another group of witnesses recalled being asked questions in a straightforward way, but did not use positive descriptions. Witnesses in this group saw the advocates as performing a role rather than being themselves, and so distinguished between positive attributes they may have noted on meeting the advocates and their straightforward style of questioning.

It was straightforward questions really, a yes or no answer and that's it really. She was just straightforward with everything ... She asked every question in a way that you'd be able to understand ... [The questions] were repeated but obviously in a different way but they've got to do that because it's a cross-examination... (s.28 young witness)

It wasn't like you could tell they was against you ... they weren't acting in a horrible way towards me, they were asking the questions and that was it. (s.28 young witness)

Only s.28 witnesses described defence advocates in these terms, specifically referencing advocates' role in the cross-examination, rather than their personal characteristics, and viewing their role as challenging but not threatening. Where these witnesses did refer to defence advocates' personal characteristics, they differentiated between the person and the role.

[The defence barrister] *was lovely; you wouldn't think that she was fighting for him because she was that nice. Obviously when she was behind the video link it changed because that's what they've got to do if they're fighting for somebody else, which I completely understood, I know that's what they've gotta do, it's their job to do that... it wasn't pleasant but it wasn't bad either because I knew.*

(s.28 witness)

Negative descriptions of defence advocate manner

A third group of witnesses described the defence advocates in negative terms, including as 'horrible', 'bullying' and 'nasty'. There was a sense that the advocates' personal characteristics and the attributes of their role were blurred, with witnesses perceiving these advocates as able to act differently and still perform their job appropriately, but choosing not to do so.

I don't like being bullied and that's basically what it felt like the barrister had done.

... I was really thinking it wasn't going to be that harsh, especially to a witness.

(s.27 adult witness)

Witnesses in this group identified the advocates as aiming their challenge at them rather than at the evidence. They described feeling intimidated and bullied by advocates whose 'smirking' or 'nasty' manner could 'infuriate' them or leave them confused and 'flustered'.

Very forceful, it felt very, it's like he was forcing me to give answers sort of thing.

Nasty is the only word I can think of to describe it, he sounded nasty when he was asking them. With him intimidating me, obviously I got flustered and mixed up and everything else. Basically he made me out to be a liar and I don't like people making me out to be a liar. (s.27 witness with additional needs)

For those who had this experience, being made to look like a liar was hugely problematic even months after the cross-examination, and influenced their view of giving evidence.

People should know that they are hard on you, they ask you questions that you don't understand so you have to say that you don't understand. They'll call you a liar and you've got to stick, try your hardest not to react, cos they're tough, they made me cry. They really, really are, they're harsh. (s.27 young witness)

All s.27 witnesses' and parent/carers' accounts of the cross-examination used negative terms of defence advocates, with none recalling them in positive or neutral terms. It was, however, not only s.27 witnesses who expressed this view of the defence advocate's manner. S.28 witnesses and parent/carers could also describe defence advocates in negative terms. One parent/carer of a young s.28 witness said after their experience the young witness now saw cross-examination as being for witnesses "to be made out as liars". Another s.28 young witness recalled her friend, also giving evidence via s.28, exiting the video link room just before she herself was cross-examined, very upset at being made to look as if she had lied although co-ordination is supposed to prevent such occurrences.

'I didn't know what to expect or anything because she was saying that the person she was getting interviewed by was supporting the other person. So she was upset because she didn't like the way she was wording the questions like as if to say she was lying and stuff.'

These findings are supported by existing academic literature. Burton et al. (2006) found that vulnerable/intimidated witnesses were more upset and stressed by cross-examination than anything else. In their study of young witness experiences, Beckett and Warrington (2015: 34-35) noted that all participants "identified the process of giving evidence and being cross-examined to be incredibly difficult for them". See Chapter 2 for more details.

Questioning

In appraising defence advocates' manner, witnesses mentioned the pace, clarity and the perceived intent of their questions. Evenly paced questioning, allowing the witness time to reflect and answer and giving clear space between questions, was valued – with rapid questioning viewed as being intended to confuse witnesses or impede their recall. S.28 witnesses described good pacing and s.27 witnesses described both good pacing and negative pacing – including those who felt hurried/given insufficient time to think about or formulate answers. Even good pacing however, could contribute little to the overall experience of questioning, as a s.27 witness noted that "*the worst thing is the way that they say it*".

In terms of question content, clearly phrased questions were appreciated, with the length of questions a further concern.⁶⁸ The use of complex and unfamiliar language was interpreted as deliberately obscuring the question. Having to answer repeated questions was seen as trying to force witnesses into an error, or to change their answer and this weighed heavily in accounts of being cross-examined. As discussed, being called a liar or accused of lying, however, stood out as the single most problematic issue. These incidents arose despite guidance that prosecutors (and defence) can intervene if questioning is inappropriate.⁶⁹

In terms of cross-examination durations, cross-examinations were reported as being notably shorter for s.28 than s.27 witnesses. S.28 witnesses recalled being cross-examined for between 20 and 45 minutes. S.27 witnesses reported giving evidence for between 45 minutes and three hours. Shorter cross-examinations were considered appropriate, whilst giving evidence for over an hour was perceived as contributing to a negative experience, especially where witnesses lost track of how long they were being cross-examined for, and could only calculate the time once they had exited.

Judges

Judges have a responsibility to control the questioning of vulnerable witnesses, including setting reasonable time limits of cross-examinations and interrupting where they feel it is necessary.⁷⁰ Judges were described as having intervened if defence practice was particularly negative but this was limited to directing advocates to rephrase the questions. Repeated questions and references to witnesses as 'lying' were not challenged, despite guidance noting that "*Judges should ensure that advocates do not attempt over-rigorous cross-examination*".⁷¹ Judges reminded witnesses that they could ask for a break and to clarify questions, but the overall impression among witnesses was that judges maintained the momentum of cross-examination but did not actively manage its balance.

The fact, however, that evidence giving was shorter for s.28 than for s.27 witnesses and that s.28 witnesses also described positive experiences, may indicate that judges were more inclined to set tighter requirements on the length and style of questioning in s.28 cases than

⁶⁸ The use of lengthy questions with multiple parts, complex grammatical structures and double negatives have been shown to be difficult for witnesses to understand and respond to with accuracy (Cashmore, 1991; Perry et al, 1995; Wheatcroft & Wagstaff, 2003; Wheatcroft, Wagstaff, & Kebbell, 2001).

⁶⁹ Ministry of Justice (2013) *The Witness Charter: Standards of care for witnesses in the criminal justice system – Standard 16: Cross-examination*. London: Ministry of Justice.

⁷⁰ R v Lubemba [2014] EWCA Crim 2064.

⁷¹ Judicial Office (2013) *Equal Treatment Bench Book: Section 5 Children and Vulnerable Adults*. London: Judicial Office (www.judiciary.gov.uk/publications/equal-treatment-bench-book/).

s.27 cases, perhaps at the Ground Rules Hearings – although this did not appear evident to the witnesses themselves.

Prosecution advocates

The prosecution advocates' role was seen as very limited: frustratingly so for those who anticipated the role being akin to that of a privately-instructed solicitor, understandably so for those who saw them as acting for the police. Reference to the CPS or prosecution service was minimal across both s.27 and s.28 witnesses, across the age-groups and by either witnesses or parents/carers.

Emotions

The process of being cross-examined proved stressful, unsettling and difficult both for s.28 and s.27 witnesses. Even where the questioning style was considered appropriate, its subject matter was negative. Nevertheless, where defence advocates conducted the cross-examination in a 'pleasant' or 'straightforward' manner, the emotional burden was lessened. It was markedly increased where the defence advocates were viewed as attacking or discrediting the witness, rather than challenging their evidence. The positive experiences were clustered among s.28 cases, and the negative experiences among the s.27 cases. Not all s.28 witnesses however, reported a positive experience – therefore, this indicates that the s.28 special measure may help to facilitate an improvement in witnesses' experience of cross-examination but the most important factor appeared to be the defence advocates' approach during cross-examination. The cluster of positive experiences may also be due to the more intensive preparation and scrutiny of questions that occurred as a result of s.28 procedures.

Despite the generally more positive experience of s.28 witnesses during cross-examination, these witnesses had to wait for some months after their cross-examination for the trial to commence. This intervening time was described as frustrating and stressful by some, but was recalled as being a less prominent concern for others. One factor which seemed to influence how witnesses felt about this period was whether a parent or someone else close to them was still waiting to give evidence. A young s.28 witness said that knowing their parent still needed to be cross-examined made the waiting more difficult. A witness wondered whether holding the pre-recorded cross-examination even earlier would have meant that the trial started earlier, which they would have favoured. Those with little interest in attending the remainder of the trial were keen to put it out of their mind and move on.

Reflections on giving evidence

The participants had varied views on whether the prosecution process had been worth the considerable effort and emotional energy they had put into it. The interviews do not indicate a simple association between the special measure used and the witnesses' view of whether it was worth it. One influence was the outcome of the case.

It's definitely worth the wait because you do get the justice in the end and you do get the closure that you need in order to move on. So I think if you never went through with it you'd just have it on your shoulders for the rest of your life and you can have it lifted a bit so definitely go through with it. (Witness – guilty verdict)

After experiencing what I did, with a not guilty verdict, I would say don't bother going to court – I would say go and get yourself checked over ... but don't take it to court because it was a waste of time. It was a complete waste of time, rubbish. I feel so much that it was an injustice to me – a complete and utter injustice. (Witness – non-guilty verdict)

Even where the verdict was 'positive', however, participants made clear that the end of a case did not bring simple closure. Witnesses spoke of ongoing trauma at having relived the offence and a sense of grief at what they had experienced in court, with very mixed feelings about the process of giving evidence.

Good because when you've done this once, it's going to be over so you can forget about it. Bad, bringing it all back up really after all those months of trying to forget it, you've got to bring it all back up and tell everybody what happened. (s.28 young witness)

Those who had positive experiences of the cross-examination but where the defendant(s) had been acquitted had separated the disappointment of the outcome from the conduct of the case, and viewed the overall experience as acceptable. By contrast, those whose cross-examinations were described in very negative terms were critical of the process and doubtful if they would engage with the justice system again or recommend that others do – even amongst those where the prosecution had been successful. The special measure used did not determine this, with some s.28 witnesses giving positive assessments of the process and its link to justice and others being critical.

Witnesses who had negative experiences, and their parents/carers, were emphatic that the system needs to change, so defence advocates are more considerate of witnesses' age and other vulnerabilities. There was, as noted, a recognition that cross-examination is intended to challenge the evidence but there was a clear sense among these witnesses that the balance was wrong, so young and vulnerable witnesses could not truly give their evidence because, in their view, the inflexible system could not be calibrated to hear it:

That considering age, no matter how old you are, even if they have to be harsh on you, the defence barristers, they should consider sometimes that it's hard for a young person to go and be in that situation in the courtroom. (s.27 young witness)

Reflections on giving evidence through s.28

Assessing whether the s.28 provision improved witness recall was complicated where long periods had passed between incidents occurring and the witness giving evidence. A high proportion of witnesses involved in the pilot had given evidence many months after offences were said to have occurred – and this may have hampered the capacity of the witness interviews to identify the impact, if any, on clarity of recall. In addition, as mentioned previously there was a lack of clarity for some s.28 participants as to whether the witness had given evidence before or during the trial.

When the design of the s.28 provision was explained to participants however, both s.28 and s.27 witnesses saw advantages in bringing forward the cross-examination. There was no discernible difference between the two groups of witnesses in this regard, as all were positive about the idea of witnesses being able to have their cross-examination more quickly. While participants were unsure what impact waiting for the trial would itself have on any witness, they saw the earlier date as positive because it would, they thought, make it easier to remember details of the incident(s) and therefore give better evidence:

I'd rather do it 6 months before the court case than 3 months before the court case, you'd have a better memory of it and they could look at their video and interview and could get more information cos they'd have more time. (s.28 young witness)

Predominantly, however, the measure was welcomed because witnesses could potentially move on with life more quickly after it. This advantage was qualified by waiting for the subsequent trial, as this could, witnesses felt, be stressful, and there was interest in considering whether trials linked with s.28 provisions could be brought forward entirely. The s.27 witnesses were unsure whether they would have preferred to give evidence under the s.28 provision had it been available, although they thought it would have been of benefit if it had pulled the entire trial forward.

Witnesses also suggested ways in which the cross-examination process could be further improved, specifically by ensuring that young or vulnerable witnesses routinely are offered the opportunity to use video link from a convenient non-court site. In some participants' views, however, there are yet more fundamental changes to be made, so that children in particular are not drawn into cross-examination in its current format.

Witness interviews: summary

- This chapter indicates that the s.28 special measure may help facilitate an improvement in witnesses' experience of cross-examination, for example, through shorter in-court waiting times and shorter cross-examinations.
- Witnesses interviewed primarily evaluated their cross-examination experience in relation to how they perceived the defence advocate conducted the cross-examination.
- The positive experiences of defence advocate questioning were clustered among s.28 cases and the negative experiences among the s.27 cases (however, not all s.28 witnesses reported a positive experience). This suggests that greater scrutiny of cross-examination questions at s.28 Ground Rules Hearings when compared to s.27 Ground Rules Hearings (as noted in the practitioner interview chapter) may lead to a more positive experience. It also indicates that defence advocates may be more accommodating of young and vulnerable witnesses' interests in the absence of a jury.

The next chapter presents the findings from analysis of monitoring data gathered during the pilot period.

6. Monitoring Data: volumes, outcomes and timeliness

Volumes

This section presents data collected by the pilot courts and compares the outcomes and timeliness of s.28 cases to s.27 cases to see if there are any differences. Those witnesses who had received a s.27 direction were considered a fit for purpose comparison as witnesses in the pilot are only eligible to be cross-examined in accordance with s.28 if they have first received a s.27 direction. S.28 witnesses are therefore a limited and specific sub-set of s.27 witnesses. The s.28 witnesses may share similar characteristics to s.27 witnesses in the pilot, however the overall witness characteristics of the s.27 witnesses group may be different from the s.28 witnesses (see Fig. 1). The lack of direct match limits the accuracy of the comparison of s.27 and s.28 cases in the pilot courts. Nonetheless, these comparisons are used to help provide an indication of the potential effect of s.28, but differences found may not be replicated under any roll out.

Table 6.1 shows that 390 s.27 cases^{72,73} were sent to the pilot courts during the pilot period. The majority of these were sexual offence cases; 72% of the s.28 cases and 81% of the s.27 cases sent during this period (Table C.13). The proportion of s.27 cases which received s.28 varied across each court from 38% in Liverpool to 67% of s.27 cases in Leeds. This data indicates that, in total, half of s.27 cases across the three courts received s.28.

Table 6.1: Volumes of s.27 and s.28 cases in pilot courts (January - October 2014)

Court	Overall caseload (s.27 and s.28)	s.27 cases which received s.28
Kingston	37	20 (54%)
Leeds	132	89 (67%)
Liverpool	221	85 (38%)
Total	390	194 (50%)

⁷² s.27 cases that did not get s.28, although they may have had other special measures.

⁷³ Some of the cases involved more than one witness and in 11 cases, at least one witness received s.28 and at least one witness received s.27-only. To avoid double-counting, these cases have been included in the s.28 case count only. It was not possible to analyse witness only data rather than case data because witness only information was not available on the court record system.

Outcomes

This section presents analysis of the outcomes of s.28 and s.27-only cases in the pilot courts during the pilot period, as well as s.27 cases in the wider court estate. This is based on monitoring data provided by the pilot courts and the HMCTS PAR Team. This was undertaken in order to see whether there were any differences in outcomes.

Table 6.2 shows the outcomes (and progress) of all s.28 and s.27-only cases in the pilot courts during the pilot period.

Table 6.2: Outcomes and progress of all s.28 and s.27 cases in the pilot

	s.28 cases	s.27 cases
Total cases ¹	194	196
Total completed cases	160	172
Guilty plea before trial	76 (73 before cross-examination)	16
Cross-examination before trial	110	-
Case ongoing	22	21
Case discontinued	9	3
Other ²	3	-
Went to trial (cracked trial)	13	47
Went to trial (effective trial)	71	109
Found guilty at trial	38	50
Not guilty at trial	31	57
Jury unable to agree at trial	2	2

¹ Cases involving multiple defendants and multiple charges have only been counted once – if a case involved one defendant receiving a number of guilty and not guilty verdicts, this has been counted as ‘guilty at trial’; if a defendant was found not guilty at trial and another defendant was found guilty at the same trial, this has been counted as ‘guilty at trial’; if a defendant pleaded guilty before cross-examination but another defendant in the case did not and the case went to cross-examination, this has been counted as ‘went to cross-examination’.

² ‘Other’ category includes: ‘defendant under disability’ (2 cases where the defendant was unfit to plead) and guilty verdict no trial (1 case).

As noted, the numbers in the pilot are small; therefore the following observations may not be replicated under any roll out. Observations indicate that there were:

- More guilty pleas before trial in s.28 cases than in s.27-only cases – defendants pleaded guilty in 48% of all concluded s.28 cases and in 9% of all concluded s.27 cases. It should, however, be noted that:
 - It is possible that some of the difference in the early guilty plea rates between s.28 and s.27 cases may be attributable to recording practices in the pilot – e.g. s.28 cases were monitored from an earlier stage than s.27 cases, which may mean that there were some s.27 cases with early guilty

pleas that were not recorded. The s.27 early guilty plea rate may therefore be an underestimate. Indeed, across the wider court estate from January to October 2014, 13% of s. 27 concluded cases resulted in an early guilty plea (Table C.1 in Appendix C),⁷⁴ compared to the 9% seen in the s.27 pilot cases. The majority of s.27 and s.28 cases were for sexual offences; nationally 33% of sexual offence cases pleaded guilty before trial in the same time period (January to October 2014).⁷⁵

- Fewer cracked trials for s.28 cases than s.27-only cases – 13 s.28 cases resulted in a cracked trial (8% of all concluded s.28 cases⁷⁶) compared to 47 s.27 cases (27% of all concluded s.27 cases). Across the wider court estate, 22% of concluded s.27 cases resulted in a cracked trial.
- There is little difference in the rates of conviction at trial for s.27 and s.28 cases (46% and 54% respectively). This suggests the concerns discussed in Chapter 4 that the recording of evidence may disadvantage the prosecution case because it is too remote,⁷⁷ may not be supported.⁷⁸

Timeliness

This section presents analysis of the timeliness of s.28 and s.27-only cases in the pilot courts during the pilot period. The analysis is based on monitoring data provided by the pilot courts, the police and CPS practitioners in the pilot areas, the HMCTS PAR Team and LIBRA data.

Time to witness cross-examination/trial

Table 6.3 shows the average time s.28 cases took to reach cross-examination and trial, and the average time s.27-only cases in the pilot courts and in the wider estate took to reach trial. The analysis is limited to those cases which have reached cross-examination/trial, meaning the analysis is based on a reduced number of cases.

⁷⁴ Similarly to s.27 and s.28 cases in the pilot, the majority of cases (66%) were sexual offence cases.

⁷⁵ 'Criminal court statistics' <https://www.gov.uk/government/collections/criminal-court-statistics>
The rate of guilty pleas nationally for all offences was 63% in January to June 2014.

⁷⁶ Concluded cases exclude those that were categorised as 'ongoing', 'discontinued' or 'other'.

⁷⁷ A view mentioned by 3 judiciary and a defence advocate.

⁷⁸ Subject to the limitations of this data already discussed; due to the small numbers of cases these findings may not be replicated on roll-out.

Table 6.3: Timeliness of s.27 and s.28 cases¹

Number of days (median) ²	s. 28 pilot cases	s.27 only cases in pilot courts	s. 27 wider court estate
Days between date case sent to Crown Court and cross-examination date	94 (based on 109 cases) ⁴	182 ³ (based on 102 cases) ⁶	215 ³ (based on 201 cases) ⁹
Days between date case sent to Crown Court and trial	199 (based on 65 cases) ⁵		
Days between charge date and cross-examination date ³	104 (based on 95 cases) ⁷	203 ³ (based on 85 cases) ⁸	236 ³ (based on 177 cases) ¹⁰
Arrest date to cross-examination (s.28) or trial date (s.27)	203 (based on 95 cases) ⁷	308 (based on 85 cases) ⁸	381 (based on 177 cases) ¹⁰

¹ Only effective trials are included in this table – cracked trials have been excluded because witnesses in cracked trials did not receive a cross-examination.

² The median was used here because it is not affected by outliers, while the mean is.

³ For s.27 cases in the pilot courts and the wider court estate, the cross-examination is assumed to happen at the trial date (first day).

⁴ 110 s.28 cases went to cross-examination, but ‘date of cross-examination’ data was only received for 109 of these cases.

⁵ 71 s.28 cases went to trial, but cases with multiple trial dates (6 cases) have been excluded from this analysis because the reasons for adjournments were not recorded and so it was not possible to compare the cases.

⁶ 109 s.27 cases went to trial, but cases with multiple trial dates (7 cases) have been excluded from this analysis because the reasons for adjournments were not recorded and so it was not possible to compare the cases.⁷⁹

⁷ 110 s.28 cases went to cross-examination, but ‘date of cross-examination’ data was missing for one case and ‘date of arrest’ data was missing for 14 cases.

⁸ 109 s.27 cases went to trial, but cases with multiple trial dates (7 cases) and cases with missing ‘arrest date’ data (17 cases) have been excluded from this analysis.

⁹ 229 s.27 cases went to trial, but cases with multiple trial dates (28 cases) have been excluded from this analysis.

¹⁰ 229 s.27 cases went to trial, but cases with multiple trial dates (28 cases) and cases with missing ‘arrest date’ data (24 cases) have been excluded from this analysis.

Table 6.3 indicates that the median time between cases being sent to the Crown Court and trial was similar for s.28 and s.27 cases in the pilot courts, and quicker than s.27 cases in the wider estate.

As discussed, an aim of s.28 is to bring the cross-examination forward to an earlier point in time. Looking at the number of days between sent date and cross-examination for s.28 and s.27 cases, it appears that it took around half the time (median = 94 days) for s.28 witnesses to be cross-examined compared to s.27 cases (median = 182 days).

⁷⁹ The figures are a conservative assessment of the timeliness of trials, however including the cases with multiple trial dates would not change the direction of the difference between the timeliness of s.27 and s.28 cases.

Achievement of timings targets

Before the commencement of the pilot, practitioners were issued with protocols that set out how the pilot processes would work. The protocols included a number of timings targets that needed to be complied with in order that s.28 cases could be expedited. It was not possible for practitioners to collect information on all of the timings targets – Table C.5 sets out the pilot protocol timing targets and indicates which of these were monitored for the purposes of this evaluation.

Tables C.6 and C.7 show the extent to which two of these timings targets were met for the s.28 cases in the pilot courts and, as a basis for comparison, for the s.27 cases in the pilot courts. The analysis indicates that in the pilot courts nearly half of s.28 cases (43%) and s.27 cases (47%) met the 7-day charge to First Hearing deadline, and around three quarters of s.28 cases (75%) and a slightly higher proportion of s.27 cases (84%) met the 14-day First Hearing to Preliminary Hearing deadline. This suggests that a slightly higher proportion of s.27 cases met these timings targets when compared to s.28 cases.⁸⁰ The practitioner interviews (see Chapter 4) suggested some of the issues associated with achievement of the timings targets.

Timeliness analysis of s.27 case data received from courts across the wider estate suggests that a smaller proportion of these cases met the charge to First Hearing deadline (33%) and the First Hearing to Preliminary Hearing deadline (49%) when compared to s.28 and s.27 cases in the pilot courts Tables (C.8 and C.9).

Hearing durations⁸¹

In the pilot courts Preliminary Hearing durations were considerably longer in s.28 cases (median = 23 minutes) than in s.27 cases (median = 6 minutes), and trial durations were slightly shorter in s.28 cases (median = 680 minutes) than in s.27 cases (median = 725 minutes) (Tables C.10 and C.11).

⁸⁰ These findings cannot be substantiated statistically because the sample was not random and may not be representative.

⁸¹ This section presents analysis of the duration of some of the hearings in s.28 and s.27-only cases in the pilot courts during the pilot period, based on monitoring data provided by the pilot courts and the HMCTS PAR Team.

These findings are supported by the practitioner interviews (see Chapter 4) – practitioners suggested that s.28 judges needed to adopt a more robust case management approach at Preliminary Hearings to try to make sure that the expedited s.28 timings were met.

Practitioners described s.28 trials as shorter and easier to manage because witnesses were absent from these trials and because full disclosure had been undertaken at a much earlier stage. The shorter trial length may mean this measure could save court time, even taking into account the longer Preliminary Hearings. There are, however, other potential factors which may mean trials may be shorter and more evidence would be required in order to determine the cause of this difference.

Hearing durations for s.27 cases in the wider court estate show that in these cases the average duration of Preliminary Hearings (median = 5 minutes) was similar to s.27 cases in the pilot courts, and the average duration of trials (median = 768 minutes) were slightly longer than s.27 cases in the pilot courts (Table C.12).

S.28 volumes under any roll out – exploratory analysis

The process evaluation sought to help identify as far as possible the potential number of cases or witnesses that might be eligible for s.28 under a wider roll out. Data from the pilot courts indicates that half of s.27 cases across the three courts received s.28. This suggests therefore, that if s.28 was rolled out nationally under the current pilot scope definition around half of s.27 cases would receive s.28.

The number of s.27 cases across the wider court estate is not centrally recorded. An estimated number based on limited data from all courts across the estate suggest that the volume of s.27 cases is in the region of 300 cases per month.^{82,83,84} If, however, data collected for the pilot courts were considered typical of the estate as a whole, then in this scenario the volumes would be higher. 390 s.27 cases were received in the three courts over the ten month pilot period suggesting approximately 13 s.27 cases per month per court. Assuming a Crown Court estate comprised of 91 courts, this would suggest a volume of approximately 1200 s.27 cases per month. As noted, however, the courts were not selected to be representative of the wider court estate.

⁸² This estimate is based on unverified data on the volume of s.27 cases provided by all courts across the estate

⁸³ To obtain monthly averages, the 9 months of data provided by the pilot courts has been divided by 9, the 3 months of data provided by the comparison courts and the 3 months of data provided by the remainder of the court estate has been divided by 3. It should, however, be noted that not all courts provided the complete data set – so the data has been divided according to the number of months data supplied for the specific court.

⁸⁴ These estimates assume that the average number of s.27 and s.28 cases during the data collection period will remain stable throughout the remainder of the year.

It is possible that around half of these 300-1200 s.27 cases might receive s.28 under wider roll out (with pilot scope). This proportion, however, could be higher as changes in practice sometimes take a while before take-up increases. Indeed, feedback from the practitioner interviews (see Chapter 4) indicated that early identification of eligible s.28 witnesses had improved during the course of the pilot as awareness became more widespread and the processes became more embedded.

Monitoring data: Summary

- The monitoring data from s.28 and s.27 cases in the pilot courts suggests that, under the pilot scope definition, around half of s.27 cases received s.28.
- While the time taken between cases being sent to the Crown Court and trial are the same for s.28 and s.27-only cases, it took around half the time for s.28 witnesses to be cross-examined compared to s.27 witnesses.
- The data from the pilot suggests that there were more guilty pleas before trial in s.28 cases than in s.27-only cases. It is possible that some of the difference in the early guilty plea rates between s.28 and s.27 cases may be attributable to recording practices in the pilot.

7. Conclusion

This report outlines the findings of a process evaluation of the implementation of s.28 in three pilot courts across England. The findings may not be replicated on roll-out due to the courts selected not necessarily being representative of the court estate as a whole; however, the main findings of the process evaluation and the implications of these are summarised below.

S.28 aimed to decrease the amount of time witnesses had to spend waiting to be cross-examined, and to improve the overall quality of the evidence provided by witnesses. It has been suggested by previous research that improvements in the quality of evidence can be made by reducing the stress witnesses experience in the lead-up to the trial and whilst giving evidence (Hamlyn et al 2004).

Going to court – timeliness

Practitioners reported that overall the listing of s.28 cases was largely successful, but some witnesses interviewed said that their cross-examinations dates had been re-advised at short notice. Practitioners said that s.28 cases benefitted from the pre-set listing times of the cross-examinations, and these start times were nearly always kept to, meaning that s.28 witnesses spent considerably less time waiting in court for their cross-examination than s.27 cases.

On average s.28 trials were shorter than s.27 trials. Practitioners also viewed s.28 trials as shorter and easier to manage. Although trial length depends on a number of factors which may not be related to particular special measures, when combined with the possibility of s.28 increasing the number of guilty pleas (see Chapter 6), this may indicate the potential for s.28 to save court time.

The role of Ground Rules Hearings

Ground Rules Hearings were considered by practitioners to be part of the reason why s.28 cases appeared less stressful for the witnesses. Questions in s.28 cases were regarded as more relevant and focused as a result of the additional scrutiny they received in s.28 Ground Rules Hearings. This may contribute to the cluster of more positive experiences of cross-examination by s.28 witnesses, as well as the finding that s.28 cross-examinations were on average shorter than in s.27 cases. S.28 cases also had shorter hearing lengths overall. The key findings section of this report discusses further the potential for expanding this increased scrutiny to other cases.

International evidence from New Zealand suggests that some of the benefits of pre-recorded cross-examination for witnesses can be separated from the impact of Ground Rules Hearings (Davies and Hanna 2013). This process evaluation also suggests that the benefits of s.28 extend beyond the influence of the Ground Rules Hearings, however, as there was also a shorter time to cross-examination in s.28 cases, witnesses spent less time waiting at trial due to a more effective listing process in s.28 cases and also spent less time being cross-examined than in s.27 cases. This, combined with the way that s.28 witnesses reported more positive experiences of cross-examination than s.27 cases, suggests the s.28 procedures helped both reduce the time to cross-examination and improve the experience for witnesses. Although some practitioners felt the quality of evidence was better, it was not possible to determine if s.28 had improved witnesses' recall as part of this improved experience. There was also a higher rate of early guilty pleas, although the reasons for this are unclear and may not be replicated in future roll-out. The areas of s.28 which may need to be re-considered prior to wider roll-out are discussed in the key findings section of this report.

Cross-examination process, procedure and experience

Witnesses interviewed reported in the pilot that their experience of cross-examination was mostly affected by how the defence advocate treated them. Practitioners felt that the questioning style in s.28 cases was better than in other cases, as questions were more focused and relevant than the questions posed to vulnerable witnesses not subject to s.28. They also felt that trauma from cross-examination was reduced in s.28 cases as a result of this. Findings from witnesses support this view, as the more positive experiences were clustered amongst s.28 witnesses and more negative experiences amongst the s.27 witnesses.

These experiences match the findings of Burton et al (2006) that the main problem for witnesses was their treatment by the defence advocate, particularly relating to communication problems and being called a liar. Where advocates in the pilot were perceived as conducting the cross-examination in a 'pleasant' or 'straightforward' manner, the emotional burden on witnesses was decreased. The style of questioning also had an impact on witnesses' ability to recall.

As outlined above, the difference in the experiences of s.28 and s.27 witnesses may be due to closer scrutiny of questions at Ground Rules Hearings; which is supported by practitioners' reports that Ground Rules Hearings rulings were largely adhered to during the cross-examination. Additionally, s.28 witnesses reported having shorter cross-examinations than s.27 witnesses did. Giving evidence for over an hour was perceived as contributing to a negative experience, which supports the assertion that the more relevant, focused questions created by the Ground Rules Hearings may be reducing the amount of time witnesses have to give evidence for, and therefore improves their experience. The difference in treatment between s.28 and s.27 cases appeared to have a positive effect on witnesses' experience of giving evidence.

Technology

There were some problems with the technology used for s.28 during the pilot, and this was reported by both practitioners and witnesses. Plotnikoff and Woolfson (2009) found that 12% of the witnesses interviewed in their study had seen the defendant from the live link, which is not supposed to happen. This was also found in this pilot, where some witnesses saw the defendant because of the way the screens were set up. Half of the witnesses interviewed reported some sort of technical hitch with the equipment.

Practitioner-reported issues with technology included rooms being unable to be used for any other cases, that CCTV could not be shown whilst on live link, that inadequate screen space was given to witnesses to see them clearly and that sound quality was too poor. Despite these technical issues, witnesses still found the video link advantageous as it provided physical distance from defendants.

Improved recall and quality of evidence

One of the aims of the pilot was to reduce the amount of time to cross-examination. Practitioners reported that cross-examinations were earlier than in s.27 cases, and the monitoring data showed that s.28 cases took on average around half the time for cross-examination to take place compared to s.27 cases. For witnesses though, the cross-examination still took place months after they had given their evidence in chief and so they did not have the same sense of this process being earlier. The time difference between the ABE interview and cross-examination meant the interviews with witnesses found no difference between s.27 or s.28 witnesses in their perceived recall; both groups considered their memories to be patchy. The benefits of earlier cross-examination were still appreciated by witnesses though, even by those who were unsure if they had received it.

Most practitioners felt that there were benefits for witnesses from s.28, which helped their recall. Practitioners were not able to accurately gauge the extent to which witnesses were able to better recall events though, due to each witness and case being different. They also could not confirm if evidence was of higher quality in s.28 cases, but many thought that this was the case. Some defence advocates felt s.28 conditions meant they were not able to effectively question the witness, for example if they wanted to follow-up on body language or an answer given during cross-examination with questions that had not been discussed in the Ground Rules Hearing. There was an appreciation however, that with pragmatic consideration by the judge and defence advocates this would still be possible where necessary.

References

- Bala, N., Ramakrishnan, K., Lindsay, R., and Lee, K. (2005) Judicial Assessment of the Credibility of Child Witnesses. *Alberta Law Review*, 42: 995
- Beckett, H. and Warrington, C. (2015) *Making Justice Work: Experiences of criminal justice for children and young people affected by sexual exploitation as victims and witnesses*. Luton: University of Bedfordshire
- Begg, I., and Wickelgren, WA. (1974) Retention functions for syntactic and lexical vs semantic information in sentence recognition memory. *Memory & Cognition* 2: 353
- Bradley, AR., Mayzer, R., Shefter, M., Olufs, E., Miller, J., and Laver, M. (2012) Juvenile Competency and Responsibility: Public Perceptions. *Journal of Applied Social Psychology*, 42 (10):2411-2432
- Brennan, M., Evans, R., and Sanders, A. (1988) *Strange language – child victims under cross-examination*. Wagga Wagga, NSW: Riverina Murray Institute of Higher Education
- Burton, M., Evans, R., and Sanders, A. (2006) Are special measures for vulnerable and intimidated witnesses working? Evidence from criminal justice agencies. Home Office Online report 01/06.
- Carter, A., Bottoms, B., and Levine, M. (1996) Linguistic and socioemotional influence on the accuracy of children's reports. *Law and Human Behavior* 20:335
- Cashmore, J. (1991) Problems and Solutions in Lawyer-Child Communication. *Criminal Law Journal* (15) 193
- Cassel, W., Roebbers, C., Bjorklund, D. (1996) Developmental patterns of eyewitness responses to repeated and increasingly suggestive questions. *Journal of Experimental Child Psychology* 61:116
- Cossins, A. (2012) Cross-examining the child complainant: Rights, innovations and unfounded fears in the Australian context. In Spencer, J.R., and Lamb, M.E. (Eds.) (2012) *Children and Cross-examination: Time to change the rules?* Bloomsbury Publishing

CPS (2011) *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures*. London: CPS

CPS (2002) *Provision of therapy for vulnerable or intimidated adult witnesses prior to a criminal trial - Practice guidance*. London

Davies, E., and Hanna, K. (2013) Pre-recording testimony in New Zealand: Lawyers' and victim advisors' experiences in nine cases. *The Australian and New Zealand Journal of Criminology*. DOI: 10.1177/0004865813485590

Davies, E., and Seymour, F.W. (1998) Questioning child complainants in sexual abuse cases in New Zealand: Analysis of criminal court transcripts. *Psychiatry, Psychology and Law*, 5, 47-61.

Deffenbacher, K., Bornstein, B., Penrod, S., and McGorty, E. (2004) A Meta-Analytic review of the Effects of High Stress on Eyewitness Memory. *Law and Human Behavior*, 28(6):687-706.

Eastwood, C.J, and Patton, W. (2002) *The experiences of child complainants of sexual abuse in the criminal justice system*. Griffith, ACT: Criminology Research Council.

Ebbinghaus, H. (1913) *Memory: A Contribution to Experimental Psychology*. New York: US Teachers College Press

Goldsmith, M., Koriat, A., and Pansky, A. (2005) Strategic regulation of grain size in memory reporting over time. *Journal of Memory and Language*. 52:505

Gudjonsson G. H., and Henry, L. (2003) Child and adult witnesses with intellectual disability: The importance of suggestibility. *Legal and Criminological Psychology*, 8(2): 241-252.

Hamlyn, B., Phelps, A., Turtle, J., and Sattar, G. (2004) *Are special measures working? Evidence from Surveys of Vulnerable and Intimidated Witnesses*. Home Office Research Study 283. London, UK: Home Office

Hanna, K., Davies, E., Crothers, C. & Henderson, E. (2011). Questioning child witnesses in New Zealand's criminal justice system. Is cross-examination fair? *Psychiatry, Psychology and Law*

Hanna, K., Davies, E., Henderson, E., Crothers, C., and Rotherham, C. (2010) Child witnesses in the New Zealand Criminal Courts: A review of practice and implications for policy. Institute of Public Policy, AUT University

Henderson, E., (2012) An idea whose time has come: The reform of criminal procedure for child witnesses in New Zealand. In Spencer, J.R., and Lamb, M.E. (Eds.) (2012) Children and Cross-examination: Time to change the rules? Bloomsbury Publishing

Henderson, E., (2012) An idea whose time has come: The reform of criminal procedure for child witnesses in New Zealand. In Spencer, J.R., and Lamb, M.E. (Eds.) (2012) Children and Cross-examination: Time to change the rules? Bloomsbury Publishing

Hickey, L. (1993) Presupposition under cross-examination. *International Journal for the Semiotics of Law* 6 (16): 89-109

Hobbs, P. (2003) 'You must say it for him.' Reformulating a witness' testimony on cross-examination at trial. *Text* 23 (4):477-511

Home Office (1989) Report of the Advisory Group on Video Evidence (The Pigot Report.). London: Home Office

Judicial Office (2013) Equal Treatment Bench Book: Section 5 Children and Vulnerable Adults. London: Judicial Office

Kintsch, W., Welsch, D., Schmalhofer, F., and Zimny, S. (1990) Sentence memory: A theoretical analysis. *Journal of Memory and Language*. 29:133

Konradi, A. (1999) 'I don't have to be afraid of you': Rape survivors' emotion management in court. *Symbolic Interaction*. 22(1):45-77

Landström S, and Granhag PA. (2010) In-court versus out-of-court testimonies: Children's experiences and adults' assessments. *Applied Cognitive Psychology*. 24: 941–955

Loftus, E. (1975) Leading questions and the eyewitness report. *Cognitive Psychology* 560

Ministry of Justice (2013) The Witness Charter: Standards of care for witnesses in the criminal justice system – Standard 16: Cross-examination. London: Ministry of Justice

O'Neill, S. and Zajac, R. (2013) The role of repeated interviewing in children's responses to cross-examination-style questioning. *British Journal of Psychology*, 104(1): 14–38

Orcutt, H. Goodman, G. Tobey, A. Batterman-Faunce, J. and Thomas, S. (2001) Detecting deception in children's testimony: Factfinders abilities to reach the truth in open court and closed circuit trials. *Law and Human Behaviour*, 25(4): 339-372

Perry, N., McAuliff, B., Tam, P., Claycomb, L., Dostal, C., and Flanagan, C. (1995) When lawyers question children: Is justice served? *Law & Human Behaviour* (19) 609

Plotnikoff, J and Woolfson, R. (2015) *Intermediaries in the criminal justice system: Improving communications for vulnerable witnesses and defendants*. Policy Press

Plotnikoff, J. and Woolfson, R. (2009) *Measuring up: Evaluating implementation of Government commitments to young witnesses in criminal proceedings*. London: NSPCC

Plotnikoff, J. and Woolfson, R. (1999) *Preparing Young Witnesses for Court: A Handbook for Young Witness Supporters (Young Witness Pack)*

Read, JD., and Connolly, DA., (2007) "The effects of delay on long-term memory for witnessed events" in *Handbook of Eyewitness Psychology: Memory for Events* 1:117–155

Sleight, K. (2007) *Commentary on the Video "A Case for Balance" – the Issue of Judicial Control of Cross-Examination*. Paper presented at the Biennial District and County Court Judges Conference, Fremantle, Western Australia 27 June – 1 July 2007.

Spencer, J.R., and Lamb, M.E. (Eds.) (2012) *Children and Cross-examination: Time to change the rules?* Bloomsbury Publishing

Spencer, L., Ritchie, J., Lewis, J., and Dillon, L. (2004) *Quality in Qualitative Evaluation: A framework for assessing research evidence*. London: Cabinet Office

Taylor, C. (2004) *Court Licensed Abuse, Patriarchal Lore and the Legal Response to Intrafamilial Sexual Abuse of Children*. New York: Peter Lang

Victim Support (2011) *Left in the dark: Why victims of crime need to be kept informed*. London: Victim Support

Westera, N.J., Kebbell, M.R., and Milne, B. (2013) Losing two thirds of the story: a comparison of the video-recorded police interview and live evidence of rape complainants. *Criminal Law Review* 4:290-308

Wheatcroft J.M., and Wagstaff, G.F. (2003) Cross-examination: The interface between psychology and the courtroom. *Forensic Update* (75) 8

Wheatcroft, J.M., and Ellison, L.E. (2012) Evidence in court: Adult witness familiarisation and cross-examination style effects on witness accuracy. *Behavioural Sciences and the Law* 30:821-840 DOI: 10.1002/bsl.2031

Wheatcroft, J.M., Wagstaff, G., & Kebbell, M.R. (2001) The influence of courtroom questioning style on eyewitness accuracy and confidence. *Forensic Update* (65) 20

Appendix A

Roles and responsibilities under the expedited s.28 process

s.28 process	Difference to usual process
Police and CPS undertake to start the disclosure of material process immediately, prior to the decision to charge	The duty to disclose in accordance with CIPA 1996 arises almost immediately in every case but although the starting point is the same, during the pilot period there are no strict timescales in place for disclosure to be completed. ⁸⁵ Therefore, there are variants in disclosure timescales related to the scale of investigations and the complexity of cases.
CPS issue charging advice within 7 days of receipt of charging advice submission from the police.	Ordinarily a 14 day turnaround.
CPS to produce a transcript of the ABE interview and serve an application for special measures on the court at least 7 days before the Preliminary Hearing – to achieve this, the CPS are reliant on the police providing copies of the ABE interview within 48 hours of the First Hearing at Magistrates Court.	Ordinarily transcripts are produced before the Plea & Case Management Hearing which takes place 10 weeks after the Preliminary Hearing.
All parties attend the Preliminary Hearing at the Crown Court 14 days after the First Hearing in the Magistrates Court. The Preliminary Hearing includes a ruling on the special measures application, discussion of the initial details of the prosecution case, an outline of the defence's core issues in dispute, any issues or risks relating to 3 rd party disclosure materials, agreement on the timetable for remainder of the case including dates of all hearings up to and including cross-examination. It also includes updates on progress	The Preliminary Hearing takes place earlier and is much longer than usual. Ordinarily this hearing does not require all parties to be present and initial disclosure of the prosecution and defence case ordinarily occurs later on.
Within 35 days of the Preliminary Hearing, police send the full file including initial disclosure to CPS and CPS review and serve indictment on the Court.	Ordinarily this is 50 days in custody cases and 70 days in bail cases.
The defence serve their statement within 28 days from service of the indictment.	Statutory - but this will be done much sooner because the prosecution statement is expedited.
14 days thereafter the defence has the right to apply for disclosure of the 3 rd party material that CPS are in possession of – CPS can only withhold if it is not in the public interest by applying for a Public Interest Immunity.	Statutory - but this will be done much sooner because prosecution statement expedited.

⁸⁵ The timescales for s.27 cases have now been updated under Better Case Management procedures, further details are available at <https://www.judiciary.gov.uk/wp-content/uploads/2015/09/better-case-management-information-pack-1.pdf>

s.28 process	Difference to usual process
<p>All parties to attend the Ground Rules Hearing – hearing to include agreement of the defence questions that will be put to witnesses at the cross-examination, following submission of the draft questions by defence advocates in advance of this hearing. The same advocates must attend the Ground Rules Hearing as will attend the cross-examination.</p>	<p>Ordinarily only conducted in trials with an intermediary but is considered good practice where a witness or defendant has communication needs. The protocol for s.28 lists some of the topics to be discussed at Ground Rules Hearings, including the length of cross-examination and any restrictions on the advocate’s usual duty to ‘put the defence case’, whereas topics are not specified in s.27 hearings. S.28 Ground Rules Hearings should be conducted a week before the cross-examination takes place. Advocates must confirm they have read the ‘Advocates Toolkit’ guidance on questioning vulnerable witnesses in advance of the Ground Rules Hearing in s.28 cases, and provide their questions in advance for the judge to approve. Guidance is also provided within the protocols on appropriate ways of questioning vulnerable witnesses.</p>
<p>All parties to attend the s.28 cross-examination.</p>	<p>Ordinarily cross-examination takes place at trial.</p>

Figure A.1. S.27 and s.28 processes



*Not to scale of in terms of times.

** The duty to disclose starts at the same point but has no strict deadlines during the pilot, so there may be variance on a case by case basis.

Appendix B

Achieved sample of witness interviews

Table B.1 shows the achieved sample of 16 participants: 8 witnesses and 8 parents/carers. The table is split by gender, age, disability, caring status, offence category and outcome.

Table B.1: Achieved sample of participants split into witnesses and parents/carers

		Witnesses		Parents/carers		All participants	
		S.28	S.27	S.28	S.27	S.28	S.27
Witness age	10-12	2	.	3	.	5	.
	13-15	3	1	3	1	6	2
	16-18	.	.	.	.	.	.
	18+	.	2	1	.	1	2
Witness gender	Male	2	.	4	.	6	.
	Female	3	3	3	1	6	4
	Transgender	.	.	.	.	.	.
Witness status	Victim	3	3	5	1	8	4
	Non-victim	2	.	2	.	4	.
Witness disability	Physical	.	1	.	.	.	1
	Mental	.	1*	1	.	1	1*
	Learning	1	1*	1	.	2	1*
	None	4	1	5	1	9	2
Offence type	Sexual	4	3	6	1	10	4
	Non-sexual	1	.	1	.	2	.
Case outcome	Guilty	2	1	4	1	6	2
	Not guilty	2	2	2	.	4	2
	Ineffective	1	.	1	.	2	.
Total		5	3	7	1	12	4

* indicates that one witness identified as having both mental health and additional needs.

Appendix C

Supplementary tables

Table C.1: Outcomes and progress of s.27 cases in the wider court estate

Outcomes	s.27 cases
Total cases	457
Completed cases	351
Guilty plea before trial	44
Case ongoing	94
Case discontinued	7
Other ⁸⁶	5
Went to trial (cracked trial)	78
Went to trial (effective trial)	229
Guilty at trial	110
Not guilty at trial	119

Table C.2: Timeliness of s.27 and s.28 cases in the pilot courts – Charge date to cross-examination date and trial date

	s.28 cases in pilot courts		s.27-only cases in pilot courts
	Days between charge date and cross-examination date (based on 95⁸⁷ s.28 cases)	Days between charge date and trial date⁸⁸ (based on 61⁸⁹ s.28 cases)	Days between sent to Crown Court and trial date⁹⁰ (based on 85⁹¹ s.27-only cases)
Number of days (mean)	117	225	228
Number of days (median)	104	213	203

⁸⁶ 'Other' category includes: 'defendant under disability' (2 cases) and guilty verdict no trial (1 case).

⁸⁷ 110 s.28 cases went to cross-examination, but 'date of cross-examination' data was missing for one case and 'date of charge' data was missing for 14 cases.

⁸⁸ Only effective trials are included in this table – cracked trials have been excluded.

⁸⁹ 71 s.28 cases went to trial, but cases with multiple trial dates (6 cases) and cases with missing 'charge date' data (4 cases) have been excluded from this analysis.

⁹⁰ 'Date sent to the Crown Court' has been used as a proxy for 'date of First hearing in the Magistrates' Court' because the actual date of first hearing in the magistrates court is not recorded on the system. This was the closest approximation of the date of first hearing.

⁹¹ 109 s.27 cases went to trial, but cases with multiple trial dates (7 cases) and cases with missing 'arrest date' data (17 cases) have been excluded from this analysis.

Table C.3: Timeliness of s.27 and s.28 cases in the pilot courts – Arrest date to cross-examination date and trial date

	s.28 cases in pilot courts		s.27-only cases in pilot courts
	Days between arrest date and cross-examination date (based on 95 ⁹² s.28 cases)	Days between arrest date and trial date ⁹³ (based on 61 ⁹⁴ s.28 cases)	Days between arrest date and trial date ⁹¹ (based on 85 ⁹⁵ s.27-only cases)
Number of days (mean)	239	348	348
Number of days (median)	203	319	308

Table C.4: Timeliness of s.27 in the wider court estate – sent date to trial, arrest date to trial and charge date to trial

	s.27 case in the wider court estate		
	Days between sent date and trial date ⁹⁶ (based on 201 ⁹⁷ s.27 cases)	Days between charge date and trial date ⁹⁸ (based on 177 ⁹⁹ s.27 cases)	Days between arrest date and trial date ¹⁰⁰ (based on 177 ¹⁰¹ s.27 cases)
Number of days (mean)	227	249	374
Number of days (median)	215	236	381

⁹² 110 s.28 cases went to cross-examination, but 'date of cross-examination' data was missing for one case and 'date of arrest' data was missing for 14 cases.

⁹³ Only effective trials are included in this table – cracked trials have been excluded because witnesses in cracked trials did not receive a cross-examination.

⁹⁴ 71 s.28 cases went to trial, but cases with multiple trial dates (6 cases) and cases with missing 'arrest date' data (4 cases) have been excluded from this analysis.

⁹⁵ 109 s.27 cases went to trial, but cases with multiple trial dates (7 cases) and cases with missing 'arrest date' data (17 cases) have been excluded from this analysis.

⁹⁶ Only effective trials are included in this table – cracked trials have been excluded because witnesses in cracked trials did not receive a cross-examination.

⁹⁷ 229 s.27 cases went to trial, but cases with multiple trial dates (28 cases) have been excluded from this analysis.

⁹⁸ Only effective trials are included in this table – cracked trials have been excluded because witnesses in cracked trials did not receive a cross-examination.

⁹⁹ 177 s.27 cases went to trial, but cases with multiple trial dates (28 cases) and cases with missing 'charge date' data (24 cases) have been excluded from this analysis.

¹⁰⁰ Only effective trials are included in this table – cracked trials have been excluded because witnesses in cracked trials did not receive a cross-examination.

¹⁰¹ 229 s.27 cases went to trial, but cases with multiple trial dates (28 cases) and cases with missing 'arrest date' data (24 cases) have been excluded from this analysis.

Table C.5: Timings targets contained in the s.28 pilot protocols

Milestone	Target	Monitoring data collected?
A Date of complaint to date of charge	4 weeks if Full Code Test applied or 8 weeks if Threshold Test applied	No
B Date of charge to date of First Hearing in the Magistrates' Court	7 days	Yes
C Date of First Hearing in the Magistrates' Court to date of Preliminary Hearing in the Crown Court	14 days	Yes
D Date of First Hearing in the Magistrates' Court to date of service of Prosecutions' case	35 days	No
E Date of service of Prosecutions' case to date of service of Defence case statement	28 days	No

Table C.6: Timeliness of s.27 and s.28 cases in the pilot courts – average time taken from date of charge to date of First Hearing¹⁰² in the Magistrates' Court, and extent to which the 7 day deadline was met

	Number of days (mean)	Number of days (median)	Within 7 day deadline	
			n	%
s.28 cases in pilot courts (based on 167 ¹⁰³ s.28 cases)	15	10	72	43%
s.27 cases in pilot courts (based on 171 ¹⁰⁴ s.27 cases)	17	10	80	47%

Table C.7: Timeliness of s.27 and s.28 cases in the pilot courts – average time taken from date of First Hearing¹⁰⁵ in the Magistrates' Court to date of Preliminary Hearing in the Crown Court, and extent to which the 14 day deadline was met

	Number of days (mean)	Number of days (median)	Within 14 day deadline	
			n	%
s.28 cases in pilot courts (based on 130 ¹⁰⁶ s.28 cases)	17	14	97	75%
s.27 cases in pilot courts (based on 153 ¹⁰⁷ s.27 cases)	15	14	128	84%

¹⁰² 'Date sent to the Crown Court' has been used as a proxy for 'date of First hearing in the Magistrates' Court' because the actual date of first hearing in the magistrates court is not recorded on the system. This was the closest approximation of the date of first hearing.

¹⁰³ There were 194 s.28 cases in the pilot – however, cases with missing 'date of charge' data (27 cases) have been excluded from the analysis.

¹⁰⁴ There were 196 s.27 cases in the pilot – however, cases with missing 'date of charge' data (25 cases) have been excluded from the analysis.

¹⁰⁵ 'Date sent to the Crown Court' has been used as a proxy for 'date of First hearing in the Magistrates' Court'.

¹⁰⁶ There were 194 s.28 cases in the pilot – however, cases with missing 'Preliminary Hearing date' data (56 cases) and cases with multiple Preliminary Hearing dates (8 cases) have been excluded from the analysis.

¹⁰⁷ There were 196 s.27 cases in the pilot – however, cases with missing 'Preliminary Hearing date' data (41 cases) and cases with multiple Preliminary Hearing dates (2 cases) have been excluded from the analysis.

Table C.8: Timeliness of s.27 in the wider court estate - average time taken from date of charge to date of First Hearing¹⁰⁸ in the Magistrates' Court (and extent to which the 7 day deadline was met)

	Number of days (mean)	Number of days (median)	Within 7 day deadline	
			n	%
s.27 cases in wider court estate (based on 400 ¹⁰⁹ s.27 cases)	27	15	132	33%

Table C.9: Timeliness of s.27 in the wider court estate - average time taken from date of charge to date of First Hearing¹¹⁰ in the Magistrates' Court to date of Preliminary Hearing in the Crown Court, and extent to which the 14 day deadline was met

	Number of days (mean)	Number of days (median)	Within 14 day deadline	
			n	%
s.27 cases in wider court estate (based on 334 ¹¹¹ s.27 cases)	18	15	162	49%

Table C.10: Timeliness of s.27 and s.28 cases in the pilot courts – average duration of Preliminary Hearings at the Crown Court

	Duration of s.28 Preliminary Hearings (based on 130 ¹¹² s.28 cases)	Duration of s.27 Preliminary Hearings (based on 153 ¹¹³ s.27 cases)
Number of minutes (mean)	27	8
Number of minutes (median)	23	6

¹⁰⁸ 'Date sent to the Crown Court' has been used as a proxy for 'date of First hearing in the Magistrates' Court'.

¹⁰⁹ There were 457 s.27 cases in the wider court estate – however, cases with missing 'date of charge' (57 cases) have been excluded from the analysis.

¹¹⁰ 'Date sent to the Crown Court' has been used as a proxy for 'date of First hearing in the Magistrates' Court'.

¹¹¹ There were 457 s.27 cases in the wider court estate – however, cases with missing 'Preliminary Hearing date' data (116 cases) and cases with multiple Preliminary Hearing dates (7 cases) have been excluded from the analysis.

¹¹² There were 194 s.28 cases in the pilot – however, cases with missing 'Preliminary Hearing date' data (56 cases) and cases with multiple Preliminary Hearing dates (8 cases) have been excluded from the analysis.

¹¹³ There were 196 s.27 cases in the pilot – however, cases with missing 'Preliminary Hearing date' data (41 cases) and cases with multiple Preliminary Hearing dates (2 cases) have been excluded from the analysis.

Table C.11: Timeliness of s.27 and s.28 cases in the pilot courts – average duration of Trials at the Crown Court

	Duration of s.28 Trials (based on 65 ¹¹⁴ s.28 cases)	Duration of s.27 Trials (based on 102 ¹¹⁵ s.27 cases)
Number of minutes (mean)	780	807
Number of minutes (median)	680	725

Table C.12: Timeliness of s.27 cases in the wider court estate – average duration of Preliminary Hearings and Trials at the Crown Court

	Duration of s.27 Preliminary Hearings (based on 334 ¹¹⁶ s.27 cases)	Duration of s.27 Trials (based on 201 ¹¹⁷ s.27 cases)
Number of minutes (mean)	7	872
Number of minutes (median)	5	768

Table C.13: Offence profile of s.27 and s.28 cases in pilot courts (Jan–Oct 2014)

	Sex cases ¹¹⁸		Non-sex cases		Total
	n	%	n	%	
s.28 cases	139	72%	55	28%	194
s.27 cases that didn't receive s.28	159	81%	37	19%	196
Combined s.27/s.28 caseload	298	76%	92	24%	390

Table C.14: Number of defendants in s.27 and s.28 cases in pilot courts (Jan–Oct 2014)

	Single defendant cases		Multiple-defendant cases		Total
	n	%	n	%	
s.28 cases	183	94%	11	6%	194
s.27 cases that didn't receive s.28	188	96%	8	4%	196
Combined s.27/s.28 caseload	371	95%	19	5%	390

¹¹⁴ 71 s.28 cases went to trial, but cases with multiple trial dates have been excluded from this analysis.

¹¹⁵ 109 s.27 cases went to trial, but cases with multiple trial dates (7 cases) have been excluded from this analysis.

¹¹⁶ There were 457 s.27 cases in the wider court estate – however, cases with missing 'Preliminary Hearing date' data (116 cases) and cases with multiple Preliminary Hearing dates (7 cases) have been excluded from the analysis.

¹¹⁷ 229 s.27 cases went to trial, but cases with multiple trial dates (28 cases) have been excluded from this analysis.

¹¹⁸ Cases involving one or more sex offence – multiple offence cases that include sex and non-sex offences have been categorised as 'sex cases'.

Table C.15: Legal aid profile of defendants in s.27 and s.28 cases in pilot courts (Jan–Oct 2014)

	Cases involving legally-aided defendants ¹¹⁹		Cases involving privately funded defendants only		Total ¹²⁰
	n	%	n	%	
s.28 cases	106	61%	68	39%	174
s.27 cases that didn't receive s.28	105	56%	83	44%	188
Combined s.27/s.28 caseload	211	58%	151	42%	362

¹¹⁹ Cases involving one or more legally-aided defendant – multiple-defendant cases that include legally aided and privately funded defendants have been categorised as 'legally-aided' cases.

¹²⁰ The legal aid status of 20 s.28 cases and 8 s.27 cases were unavailable on CREST.

Appendix D

Practitioner topic guides

The following tables present the questions asked of each practitioner group, and questions asked of all groups.

Judiciary	Police	CPS	Defence Staff
<p>WARM UP</p> <p>Interview number Job title and brief explanation of role How many s.28 cases have you been involved in? What do you understand the aims of s.28 to be?</p>			
<p>COMMUNICATIONS/TRAINING</p> <p>When were you first told that you would be involved in the s.28 pilot? What were you told, by whom, how (i.e. method), effectiveness, was it helpful, relevant, useful etc. Other communications on s.28: What, by whom, how (i.e. method), regularity Did you receive any training on s.28? What form? From whom? Effectiveness?</p>			
<ul style="list-style-type: none"> • PROBE: were you involved in shaping the content of any communications? What was your involvement? • Did you receive any training? • What form? From whom? Effectiveness? • Were you involved in delivering any training? 	Not asked – not relevant	Not asked – not relevant	Not asked – not relevant
<p>PROCESS</p> <p><i>[Throughout this section, explore any differences associated with different witness / victim / case / defendant (e.g. bail/custody) types. To note, we only require general information, rather than specific examples, and this should be explained to the interviewee.]</i></p> <ul style="list-style-type: none"> • COVER EACH OF THE PROCESS STEPS (SEE BOXES BELOW) IN TURN INCLUDING THE TIMINGS TARGETS • At each step: • What do you do here? And who do you work with on this? • How, if at all, does this differ from how you handle s.27-only cases? <ul style="list-style-type: none"> – How have you dealt with this change? • PROMPTS: adapted case management processes, timings, liaison with colleagues/other agencies <ul style="list-style-type: none"> – How, if at all, has this impacted on your workload? And on how you handle other cases? • What has worked well and less well from <u>your</u> perspective? And generally from the perspective of your <u>colleagues/other CJS agencies</u> involved? <ul style="list-style-type: none"> – What are the advantages/disadvantages of doing things this way? – How could improvements be made? 			

Judiciary	Police	CPS	Defence Staff
<ul style="list-style-type: none"> – PROMPTS: case management process, timetable, liaison with colleagues/other agencies • What do you perceive has worked well and less well from the perspective of s.28 <u>witnesses and victims generally</u>? <ul style="list-style-type: none"> – What are the advantages/disadvantages of doing things this way? – How could improvements be made? – Are you aware of the timing targets involved in s.28 cases? – Are there any local timing targets? • Have you and your colleagues been able to meet the timings targets? <ul style="list-style-type: none"> – What has helped and hindered achievement of these targets? – What changes could be made to the process/timings? – How do the timings targets for s.28 cases impact on the timings of non-s.28 cases, or other work? 			
<p>HEARINGS Thinking about your role in preparing for and conducting the following hearings for s.28 cases, have you been required to make any adjustments to the way you conduct your role as a result (compared to s.27-only cases and other special measures cases)?</p> <ul style="list-style-type: none"> • Preliminary Hearing • Ground Rules Hearing • Cross-examination • Trial • Sentence <p>How have you adapted to these changes?</p> <ul style="list-style-type: none"> • What are the advantages and disadvantages of these changes to the Judiciary? To court staff and other CJS agencies involved? To witnesses? • In your experience, has s.28 increased the number of hearings compared to non s.28 	<p>Police process steps Identifying potential s.28 witnesses and assessing witness need for s.28 Working with the CPS and other agencies up to point of charge Appointing intermediaries pre-charge Seeking access to relevant third party material pre-charge Charging suspects Charging and bailing/remanding defendants in custody Timings targets: Bailing defendants to appear at Magistrates within 7 days of charge Preparation for the 1st Hearing in the Magistrates Timings targets: Send file to CPS no later than 48 hours before 1st Hearing Preparation for the Preliminary Hearing in the Crown Court Timings targets: First hearing to preliminary hearing = 21 days</p>	<p>CPS process steps Identifying potential s.28 witnesses and assessing witness need for s.28 Working with the police and other agencies up to point of charge Charging advice (MG3) provided by CPS, to include an Action Plan Charge suspects Seeking access to relevant third party material pre-charge Preparation for and attendance at the 1st Hearing in the Magistrates Timings targets: Receive file from Police no later than 48 hours before 1st Hearing Send Initial Details of the Prosecution Case (together with DVD of ABEs) to Defence no later than 48 hours before first Hearing, or at first hearing, if details of the Defence are not known. Serve papers on Magistrates no later than 48 hours before 1st Hearing Preparation for and attendance at the Preliminary Hearing at the Crown</p>	<p>Defence process steps Seeking access to relevant third party material pre-charge Preparation for and attendance at the 1st Hearing in the Magistrates Timings targets: Receive Initial Details of the Prosecution Case (together with DVD of ABEs) from CPS no later than 48 hours before 1st Hearing, or at court, if not instructed earlier. Preparation for and attendance at the Preliminary Hearing at the Crown Timings targets: Receive a special measures application and transcripts of ABEs from CPS at least 7 days prior to the Preliminary Hearing Preparation for and attendance at the Ground Rule Hearing and Section 28 cross-examination hearing Preparation for and attendance at the Plea and Case Management</p>

Judiciary	Police	CPS	Defence Staff
cases?	<p>Case preparation in advance of Section 28 cross-examination</p> <p>Timings targets</p> <p>Sending full file to CPS with initial disclosure within 3 weeks of 1st Hearing in the Magistrates</p> <p>Preparation for the Ground Rule Hearing and Section 28 cross-examination hearing</p> <p>Timings targets:</p> <p>Conduct witness refresh of ABE prior to cross-examination, and as close as possible to cross-examination date, in rare cases, when required.</p> <p>Arranging (with SPOC) familiarisation visit – wherever possible, this should be co-ordinated with the conference with counsel and the victim’s special measures meeting</p> <p>Preparation for the Plea and Case Management Hearing</p> <p>Preparation for trial</p> <p>Timings targets:</p> <p>Conduct review of case (in consultation with CPS and the appointed advocate) after pre-recorded cross-examination has occurred.</p> <p>Preparation for sentence hearing</p>	<p>Timings targets:</p> <p>Provide to Court and Defence a special measures application and transcripts of ABEs at least 7 days prior to the Preliminary Hearing</p> <p>Attend Preliminary Hearing at Crown (21 days from 1st Hearing at Magistrates)</p> <p>Preparation for and attendance at the Ground Rule Hearing and Section 28 cross-examination hearing</p> <p>Timings targets:</p> <p>Serves prosecution case within 35 days of the Preliminary Hearing</p> <p>Preparation for and attendance at the Plea and Case Management Hearing</p> <p>Preparation for and attendance at Trial</p> <p>Timings targets:</p> <p>Conduct review of case (in consultation with the police and the appointed advocate) after pre-recorded cross-examination has occurred.</p> <p>Preparation for and attendance at Sentence Hearing</p>	<p>Hearing</p> <p>Preparation for and attendance at Trial</p> <p>Preparation for and attendance at Sentence Hearing</p>
Not asked – not relevant	<p>FOLLOW UP QUESTIONS</p> <p><i>[Throughout this section, explore any differences associated with different witness / case / defendant (e.g. bail/custody) types. Again, only general information is wanted here, rather than specific, and it might be worth reiterating this.]</i></p> <p>Thinking about how you generally</p>	<p>FOLLOW UP QUESTIONS</p> <p><i>[Throughout this section, explore any differences associated with different witness / case / defendant (e.g. bail/custody) types. Again, only general information is wanted here, rather than specific, and it might be worth reiterating this.]</i></p> <p>Thinking about how you generally</p>	<p>FOLLOW UP QUESTIONS</p> <p><i>[Throughout this section, explore any differences associated with different witness / case / defendant (e.g. bail/custody) types. Again, only general information is wanted here, rather than specific, and it might be worth reiterating this.]</i></p> <p>Thinking about how you explain s.28</p>

Judiciary	Police	CPS	Defence Staff
	<p>identify potential s.28 witnesses and assess witness need for s.28:</p> <ul style="list-style-type: none"> • How do you initially identify potential s.28 witnesses? • How do you decide/assess eligibility? • Who and what (e.g. guidance) do you consult? How effective is this? • What has worked well and less well? • How could improvements be made? • Thinking about how you explain s.28 to s.28 witnesses and victims • When do you explain s.28 to witnesses /victims (and parents/carers)? • What do you say to them? • PROBE on main advantages and disadvantages? • What materials do you use? How effective are they? • How do witnesses (and parents/carers) react? • PROBE: comprehension, estimated take-up rate, reasons for take-up/non-take-up • What has worked well and less well? • How could improvements be made? • Thinking about the support 	<p>identify potential s.28 witnesses and assess witness need for s.28:</p> <ul style="list-style-type: none"> • How do you initially identify potential s.28 witnesses? • How do you decide/assess eligibility? • Who and what (e.g. guidance) do you consult? • How effective is this? • What has worked well and less well? • How could improvements be made? 	<p>to suspects/defendants:</p> <ul style="list-style-type: none"> • When do you explain s.28? What do you say to them • PROBE on main advantages and disadvantages? • What materials do you use? • How do they react? • PROBE: comprehension, estimated objection rate, reasons for objection, affecting their early guilty plea decision? • What has worked well and less well? • How could improvements be made?

Judiciary	Police	CPS	Defence Staff
	<p>services you offer/signpost to s.28 witnesses and victims</p> <ul style="list-style-type: none"> • What support do you offer, and when? How does this differ to s.27-only witnesses? • How do witnesses react? • PROBE: comprehension, estimated take-up rate, reasons for take-up/non-take-up • What has worked well and less well? • How could improvements be made? 		
<p>DETAIL ON CROSS-EXAMINATION HEARINGS</p> <ul style="list-style-type: none"> • Comparing the s.28 cross-examination process to 'traditional' at-trial cross-examination, have you observed any changes? • In the quality of the evidence provided? • PROBE: witnesses' ability to recall and recount events? • The level of stress/distress suffered by witnesses? • The behaviour of advocates? • PROBE: number of questions and type of questions asked, the Judge's need to interject • Behaviour of defendants or other people present? • How have you adapted to these changes? 	<p>Not asked – not relevant</p>	<p>DETAIL ON CROSS-EXAMINATION HEARINGS</p> <ul style="list-style-type: none"> • Have there been any issues with listing the hearings/ cases that you are aware of? <ul style="list-style-type: none"> – Section 28 cases – Other cases • Has there been an intermediary involved in any of the Section 28 cases you've been involved with? • What has worked well and less well? • Comparing the s.28 cross-examination process to 'traditional' at-trial cross-examination, have you observed any changes? • In the process, timing and location of the trial? • In the quality of the evidence provided? • PROBE: witnesses' ability to recall 	<p>DETAIL ON CROSS-EXAMINATION HEARINGS</p> <ul style="list-style-type: none"> • Have there been any issues with listing the hearings/ cases that you are aware of? <ul style="list-style-type: none"> – Section 28 cases – Other cases • Has there been an intermediary involved in any of the Section 28 cases you've been involved with? • What has worked well and less well? • Comparing the s.28 cross-examination process to 'traditional' at-trial cross-examination, have you observed any changes? • In the process, timing and location of the trial? • In the quality of the evidence provided?

Judiciary	Police	CPS	Defence Staff
<ul style="list-style-type: none"> What are the advantages and disadvantages of these changes to the Judiciary? To court staff and other CJS agencies involved? To witnesses? 		<p>and recount events?</p> <ul style="list-style-type: none"> The level of stress/distress suffered by witnesses? PROBE: the Judge's need to halt proceedings The behaviour of advocates? PROBE: number of questions and style of questions asked, the Judge's need to interject Behaviour of defendants or other people present? Any impact on the jury? How have you adapted to these changes? When using video-recording technology, is there anything which works well, or could be improved in your experience? Issues with the equipment Provision of information to staff Physical impact on proceedings Awareness of cameras in court 	<ul style="list-style-type: none"> PROBE: witnesses' ability to recall and recount events? The level of stress/distress suffered by witnesses? PROBE: the Judge's need to halt proceedings The behaviour of advocates? PROBE: number of questions and style of questions asked, the Judge's need to interject Behaviour of defendants or other people present? Any impact on the jury? How have you adapted to these changes? When using video-recording technology, is there anything which works well, or could be improved in your experience? Issues with the equipment Provision of information to staff Physical impact on proceedings Awareness of cameras in court
<p>DETAIL ON TRIALS</p> <ul style="list-style-type: none"> Comparing the s.28 trial process to traditional trials (i.e. where the witness is cross-examined at trial), have you observed any changes? The behaviour of advocates? PROBE: number of questions and type of questions asked, the Judge's need to interject Behaviour of defendants or other 	<p>Not asked – not relevant</p>	<p>DETAIL ON TRIALS</p> <ul style="list-style-type: none"> Comparing the s.28 trial process to traditional trials (i.e. where the witness is cross-examined at trial), have you observed any changes? The behaviour of advocates? PROBE: number of questions and type of questions asked, the Judge's need to interject Behaviour of defendants or other people present? 	<p>DETAIL ON TRIALS</p> <ul style="list-style-type: none"> Comparing the s.28 trial process to traditional trials (i.e. where the witness is cross-examined at trial), have you observed any changes? The behaviour of advocates? PROBE: number of questions and type of questions asked, the Judge's need to interject Behaviour of defendants or

Judiciary	Police	CPS	Defence Staff
<p>people present?</p> <ul style="list-style-type: none"> • The behaviour of the Jury? Number of queries from the jury? • How have you adapted to these changes? • What are the advantages and disadvantages of these changes to the Judiciary? To court staff and other CJS agencies involved? To witnesses? 		<ul style="list-style-type: none"> • The behaviour of the Jury? • How have you adapted to these changes? • Thinking about video-recording technology generally, is there anything which worked well, or anything which you feel could have been done differently? • Issues with the equipment • Provision of information to staff • Physical impact on proceedings • Awareness of cameras in court 	<p>other people present?</p> <ul style="list-style-type: none"> • The behaviour of the Jury? • How have you adapted to these changes? • Thinking about video-recording technology generally, is there anything which worked well, or anything which you feel could have been done differently? • Issues with the equipment • Provision of information to staff • Physical impact on proceedings • Awareness of cameras in court
<p>TECHNOLOGY/ SCHEDULING</p> <ul style="list-style-type: none"> • Have there been any issues with listing cases that you are aware of? <ul style="list-style-type: none"> – Section 28 cases – Other cases • Thinking specifically about the technology for recording cross-examination and playing that back at trials, is there anything which worked well, or anything which you feel could have been done differently? • Issues with the recording equipment • Issues with the DVD editing process • Issues with the play-back equipment • Quality of the recordings • Visibility of the evidence to 	Not asked – not relevant	Not asked – not relevant	Not asked – not relevant

Judiciary	Police	CPS	Defence Staff
Jurors <ul style="list-style-type: none"> ● Provision of training/guidance to court staff ● Physical impact on proceedings 			
CASE OVERALL <ul style="list-style-type: none"> ● In your experience, has the Section 28 process led to a change in the amount of time a case takes to resolve? ● Longer than usual? ● If so, is this delay acceptable? 	Not asked – not relevant	Not asked – not relevant	Not asked – not relevant
GENERAL REFLECTIONS Overall, what do you think is working well and less well with the Section 28 process? What are the key improvements that could be made? Any further points that you would like to feed back to the project team?			

Court Staff	Intermediaries	Witness Care Officer	Witness Service Staff
<p style="text-align: center;">WARM UP</p> <p style="text-align: center;">Interview number Job title and brief explanation of role How many s.28 cases have you been involved in? What do you understand the aims of s.28 to be?</p>			
<p style="text-align: center;">COMMUNICATIONS/TRAINING</p> <p style="text-align: center;">When were you first told that you would be involved in the s.28 pilot? What were you told, by whom, how (i.e. method), effectiveness, was it helpful, relevant, useful etc. Other communications on s.28: What, who, how (i.e. method), regularity, effectiveness Did you receive any training on s.28? What form? From whom? Effectiveness?</p>			
<p style="text-align: center;">PROCESS</p> <ul style="list-style-type: none"> • <i>Throughout this section, explore any differences associated with different witness / victim / case / defendant (e.g. bail/custody) types. To note, we only require general information, rather than specific examples, and this should be explained to the interviewee.]</i> • COVER EACH OF THE PROCESS STEPS (SEE GREY BOXES BELOW) IN TURN INCLUDING THE TIMINGS TARGETS • At each step: • What do you do here? And who do you work with on this? • How, if at all, does this differ from how you handle s.27-only cases? <ul style="list-style-type: none"> – How have you dealt with this change? • PROMPTS: adapted case management processes, timings, liaison with colleagues/other agencies <ul style="list-style-type: none"> – How, if at all, has this impacted on your workload? And on how you handle other cases? • What has worked well and less well from <u>your</u> perspective? And generally from the perspective of your <u>colleagues/other CJS agencies</u> involved? <ul style="list-style-type: none"> – What are the advantages/disadvantages of doing things this way? – How could improvements be made? – PROMPTS: case management process, timetable, liaison with colleagues/other agencies • What do you perceive has worked well and less well from the perspective of s.28 <u>witnesses and victims generally</u>? <ul style="list-style-type: none"> – What are the advantages/disadvantages of doing things this way? – How could improvements be made? • Are you aware of the timing targets involved in s.28 cases? <ul style="list-style-type: none"> – Are there any local timing targets? • Have you and your colleagues been able to meet the timings targets? 			

Court Staff	Intermediaries	Witness Care Officer	Witness Service Staff
<ul style="list-style-type: none"> – What has helped and hindered achievement of these targets? – What changes could be made to the process/timings? – How do the timings targets for s.28 cases impact on the timings of non-s.28 cases, or other work? 			
<p>Court staff process steps</p> <ul style="list-style-type: none"> • Listing and preparation for the Preliminary Hearing at the Crown • Listing Preliminary Hearing 21 days from 1st Hearing at Magistrates • Receive DVD of ABEs from CPS before the Preliminary Hearing • Receive a special measures application and transcripts of ABEs from CPS at least 7 days prior to the Preliminary Hearing • Listing and preparation for the Ground Rules Hearing • Listing and preparation for the Section 28 cross-examination hearing • Listing and preparation for the Plea and Case Management Hearing • Listing and preparation for the Trial • Listing and preparation for the Sentence hearing 	<p>Intermediaries / Caseworkers process steps</p> <p>Providing support to (and on behalf of) witnesses at the following stages:</p> <ul style="list-style-type: none"> • Ground Rule Hearing • Section 28 cross-examination Hearing 	<p>Witness Care Unit Staff process steps</p> <p>Liaising with CJS agencies and witnesses at the following stages:</p> <ul style="list-style-type: none"> • Pre-charge • First Hearing in the Magistrates • Preliminary Hearing in the Crown • Ground Rule Hearing • Preparation for and attendance at the Section 28 cross-examination hearing • Trial and Sentence Hearing • Post-Trial support 	<p>Victim Support / Witness Service Staff process steps</p> <p>Providing support to witnesses at the following stages:</p> <ul style="list-style-type: none"> • Pre-charge • First Hearing in the Magistrates • Preliminary Hearing in the Crown • Preparation for and attendance at the Section 28 cross-examination hearing • Trial and Sentence Hearing • Post-Trial support
<p>FOLLOW UP QUESTIONS</p> <p><i>[Throughout this section, explore any differences associated with different witness / case / defendant (e.g. bail/custody) types. Again, only general information is wanted here, rather than specific, and it might be worth reiterating this.]</i></p> <ul style="list-style-type: none"> • Thinking about the general management of the court day, has there been any issues with: 	<p>Not asked – not relevant</p>	<p>FOLLOW UP QUESTIONS</p> <p><i>[Throughout this section, explore any differences associated with different witness / case / defendant (e.g. bail/custody) types. Again, only general information is wanted here, rather than specific, and it might be worth reiterating this.]</i></p> <ul style="list-style-type: none"> • Thinking about how you explain s.28 to s.28 witnesses and victims 	<p>FOLLOW UP QUESTIONS</p> <p><i>[Throughout this section, explore any differences associated with different witness / case / defendant (e.g. bail/custody) types. Again, only general information is wanted here, rather than specific, and it might be worth reiterating this.]</i></p> <ul style="list-style-type: none"> • Thinking about how you explain s.28 to s.28 witnesses and victims

Court Staff	Intermediaries	Witness Care Officer	Witness Service Staff
<ul style="list-style-type: none"> – Section 28 cases – Other cases • Have there been any issues with listing cases? <ul style="list-style-type: none"> – Section 28 cases – Other cases • Has Section 28 affected the general management of the court day? • Thinking specifically about the technology for recording cross-examination and playing that back at trials, is there anything which worked well, or anything which you feel could have been done differently? • Being able to access the technology – booking of • Setting up and operating the recording equipment • Obtaining DVDs of the recordings • Managing the editing, storage and transportation of the DVDs • Issues with the play-back equipment • Quality of the recordings • Visibility of the evidence to Jurors • Provision of training/guidance to court staff • Physical impact on proceedings 		<ul style="list-style-type: none"> • When do you explain s.28 to witnesses /victims (and parents/carers)? • What do you say to them? • PROBE on main advantages and disadvantages? • What materials do you use? How effective are they? • How do witnesses (and parents/carers) react? • PROBE: comprehension, estimated take-up rate, reasons for take-up/non-take-up • What has worked well and less well? • How could improvements be made? • Thinking about the support services you offer/signpost to s.28 witnesses and victims • What support do you offer, and when? How does this differ to s.27-only witnesses? • How do witnesses react? • PROBE: comprehension, estimated take-up rate, reasons for take-up/non-take-up • What has worked well and less well? • How could improvements be made? • Has there been an intermediary involved in any of the Section 28 cases you've been involved 	<ul style="list-style-type: none"> • When do you explain s.28 to witnesses /victims (and parents/carers)? • What do you say to them? • PROBE on main advantages and disadvantages? • What materials do you use? How effective are they? • How do witnesses (and parents/carers) react? • PROBE: comprehension, estimated take-up rate, reasons for take-up/non-take-up • What has worked well and less well? • How could improvements be made? • Thinking about the support services you offer/signpost to s.28 witnesses and victims • What support do you offer, and when? How does this differ to s.27-only witnesses? • How do witnesses react? • PROBE: comprehension, estimated take-up rate, reasons for take-up/non-take-up • What has worked well and less well? • How could improvements be made? • Has there been an intermediary involved in any of the Section 28 cases you've been involved

Court Staff	Intermediaries	Witness Care Officer	Witness Service Staff
		with? • What has worked well and less well?	with? • What has worked well and less well?
Not asked – not relevant	DETAIL ON CROSS-EXAMINATION HEARINGS Have there been any issues with listing the hearings/ cases that you are aware of? Section 28 cases Other cases <ul style="list-style-type: none"> • Comparing the s.28 cross-examination process to 'traditional' at-trial cross-examination, have you observed any changes? • In the process, timing and location of the trial? • In the quality of the evidence provided? • PROBE: witnesses' ability to recall and recount events? • The level of stress/distress suffered by witnesses? • PROBE: the Judge's need to halt proceedings • The behaviour of advocates? • PROBE: number of questions and style of questions asked, the Judge's need to interject • Behaviour of defendants or other people present? • Any impact on the jury? • How have you adapted to these changes? 	Not asked – not relevant	Not asked – not relevant

Court Staff	Intermediaries	Witness Care Officer	Witness Service Staff
	<ul style="list-style-type: none"> • When using video-recording technology, is there anything which works well, or could be improved in your experience? • Issues with the equipment • Provision of information to staff • Physical impact on proceedings • Awareness of cameras in court 		
Not asked – not relevant	<p>DETAIL ON TRIALS</p> <ul style="list-style-type: none"> • Comparing the s.28 trial process to traditional trials (i.e. where the witness is cross-examined at trial), have you observed any changes? • The behaviour of advocates? • PROBE: number of questions and type of questions asked, the Judge’s need to interject • Behaviour of defendants or other people present? • The behaviour of the Jury? • How have you adapted to these changes? • Thinking about video-recording technology generally, is there anything which worked well, or anything which you feel could have been done differently? • Issues with the equipment • Provision of information to staff • Physical impact on proceedings • Awareness of cameras in court 	Not asked – not relevant	Not asked – not relevant

Court Staff	Intermediaries	Witness Care Officer	Witness Service Staff
<p style="text-align: center;">GENERAL REFLECTIONS</p> <p>Overall, what do you think is working well and less well with the Section 28 process? What are the key improvements that could be made? Any further points that you would like to feed back to the project team?</p>			

Figure D.1. Local Implementation Feedback

Local Implementation Feedback

The following questions were asked of practitioners who were involved in the pilot by the Local implementations leads in each of the pilot areas:

- What challenges have been encountered by you or your team with implementing the Section 28 process for specific cases (or case types)?
- How do you or your team think these challenges can be overcome internally or at national level?
- What aspects of the Section 28 process have worked particularly well?
- What key learning and suggestions would you like to feed back to the Section 28 National Project Team?