



# Making Justice Work

Experiences of criminal justice for children and young people affected by sexual exploitation as victims and witnesses

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<sup>a</sup> Representatives are not being named to maintain anonymity of sites.

# List of acronyms

ABE	Achieving best evidence
CPS	Crown Prosecution Service
CSE	Child sexual exploitation
The International Centre	The International Centre: Researching Child Sexual Exploitation, Violence and Trafficking
ISVA	Independent sexual violence advisor
MoJ	Ministry of Justice
NFA	No further action
RI	Registered intermediary
VCS	Victim contact scheme
Victims' Code	Code of practice for victims of crime
VPS	Victim personal statement
WWFU	What works for us
YJACE Act	Youth Justice and Criminal Evidence Act

# Executive Summary

## About the research

**1.** *Making Justice Work* is a one year participatory pilot research project, carried out by The International Centre: Researching Child Sexual Exploitation, Violence and Trafficking at The University of Bedfordshire. The research explored young people's experiences of the criminal justice system in child sexual exploitation (CSE) cases, and the ways in which these could be improved.

**2.** The work consisted of: a policy and literature review; in-depth participatory research with nine young 'experts by experience';<sup>1</sup> interviews with two peer supporters;<sup>2</sup> and interviews and focus groups with 38 professionals.

**3.** The primary emphasis was on the in-depth participatory research with the young experts by experience, given the limited nature of young people's perspectives within the existing body of evidence. The other three strands of work served to contextualise and triangulate this learning. A high degree of convergence emerged across all elements of the primary research. The findings also strongly resonate with themes identified in other research, inquiries and reviews.

**4.** Although often critical in their commentary, participants recognised the existence of pockets of good practice and were keen to see these implemented on a wider scale. The findings of the research are presented in a similar spirit; in the hope that they will provide helpful insights for the wide range of current initiatives for change within this field.

## Young people's journeys through the criminal justice system

**5.** Data was gathered around the framework of 'a young person's journey through the criminal justice process'. The key messages emerging from this are presented below.

## The investigative process

*"My experience made me feel so bad ...I feel like I can't go to the police no more because I'll just get laughed at; I'll get judged and get hurt really deep down"*  
(young person C).

**6.** The majority of the young experts by experience described their initial encounters with the police as lacking in sensitivity and respect, with many being made to feel in some way culpable for their abuse. The research suggests this relates to insufficient understanding of the complexities of CSE and the impacts of trauma and abuse.

**7.** Professional accountability where practice does not meet acceptable standards was a critical issue of concern for the experts by experience and the professionals working with them.

**8.** The research observed inconsistent implementation of recognised good practice around Achieving Best Evidence interviews, specifically in relation to rapport building, reducing anxiety, questioning styles and willingness to let young people have a supporter present. Similar inconsistencies in practice were observed in relation to other provisions designed to support vulnerable witnesses, despite young people's entitlement to these.

**9.** There is presently insufficient recognition and accommodation of the distinct needs and capacities of adolescents and their right to be informed about, and involved in, decision-making wherever appropriate.

**10.** Participants identified clear and regular communication as critical to young people's understanding of, and preparedness for, engagement in the criminal justice system, and their overall sense of control. This was noted to be lacking in many cases.

**11.** The research found insufficient recognition of, and response to, the ways in which involvement in CSE related investigative processes can negatively impact on a young person's wellbeing, including their: relationships with family and friends; education; physical safety and emotional wellbeing. There was also insufficient provision to address these needs.

<sup>1</sup> Young people, aged 14-19 years, with direct experience of CSE related criminal justice processes, accessed through and supported by specialist CSE services. The term 'experts by experience' was chosen by the young people in a self-representation exercise undertaken towards the end of the work.

<sup>2</sup> Young people trained and supported to advise other young people through criminal justice processes in CSE cases.

## Decision-making and preparation for court

*“Half way through it you need a lot of support. This is the point where you don’t really have much to do with it. You just have to sit there. You don’t know what’s going on or what’s going to happen” (young person A).*

**12.** The research found limited access to pre-trial therapy due to misinformation about young people’s entitlements to this and difficulties accessing services for this purpose. This had significant impacts on young people’s wellbeing.

**13.** Lack of communication was a critical concern for both the experts by experience and professional participants, in relation to informing young people about the progress and outcomes of cases. This was particularly significant for cases concluding with a ‘no further action’ decision or a non-court disposal.

**14.** There was considerable variation in young people’s experiences of court preparation including limited evidence of memory refreshing and variable quality of pre-trial court visits. Participants highlighted a need for pre-trial visits to be undertaken by trained personnel who can support young people to have realistic expectations without unduly raising anxiety.

## The court process and beyond

*“One thing that comes to mind for me is a young person saying that the court process was worse than the exploitation itself. That was in relation to the aggressive cross-examination of the defence barristers around her character and her behaviour” (professional focus group 2).*

**15.** *Making Justice Work* found considerable variation in standards of practice around the judicial management of trials, including use and management of ground rules for cross-examination and use of powers to restrict access to the courts. These variations had significant consequences on young people’s experiences of a characteristically traumatic process.

**16.** The research found considerable variation in safety planning around court spaces, the degree to which the recognised role for witness supporters was being enabled and the extent to which legal advocates were delivering on the Prosecutors’ Pledge to facilitate meaningful two-way communication with a victim.

**17.** Use of Special Measures was an issue of particular contention for participants in the research. This specifically related to a failure to explain the pros and cons of different

Special Measures and to elicit young people’s perspectives about which would enable them to give their best evidence. The experts by experience were clear that use of live-link (particularly where not accompanied by use of screening) was not always in the best interests of the child.

**18.** A lack of timely, clear communication about prosecutorial decisions and outcomes was noted in many cases, as was a need to understand that concepts of ‘success’ and ‘justice’ are differentially understood and experienced by young people.

**19.** The post-court period was noted to be one of the most difficult for young people; a fact that they felt many professionals failed to recognise as their responsibilities drew to a close. The experts by experience noted the need to provide support around the continued impact of both the abuse and engagement in criminal justice processes, beyond the closure of legal proceedings.

*“For me, after the sentencing was the worst time. I don’t know why, but during the investigation you always have something on your mind to distract you... Once it all ends you only have that to think about and it overwhelms you and everyone’s trying to get on with their life and you’re still stuck in that moment” (young person D).*

## Underpinning themes

**20.** Six key themes emerged across the different stages of the criminal justice process outlined above.

**21. Professional attitudes:** Safeguarding young victims and witnesses in CSE cases requires a compassionate and empathetic response from professionals. Evidence from *Making Justice Work* suggests that this has been absent from many young people’s encounters with criminal justice professionals in CSE cases. Despite improved guidance, young people’s presenting behaviours continue to be interpreted as indicative of unreliability and/or culpability, rather than considered as a response to vulnerability, trauma and victimisation.

**22. Communication:** The presence or absence of effective communication throughout the criminal justice process has a significant impact on young people’s sense of safety and wellbeing and their propensity towards (dis)engagement. Examples where professionals took time to explain the rationale behind processes and decisions were highly valued, but these were observed to be

exceptional practice rather than the norm. Young people's experiences of communication were more typically characterised by: an absence of proactive and timely information; a lack of clarity; failure to explain why decisions were made and changing and inconsistent points of contact.

**23. Wellbeing and support needs:** There was a clear consensus across participants that the wellbeing and support needs of victims and witnesses are not yet being adequately addressed. The need for progress was identified in relation to ensuring that both victims and witnesses have access to advocacy, long term and coordinated support by a single trusted individual and additional therapeutic support where desired.

**24. Power and control for victims and witnesses:** Participants repeatedly described the process of engagement with the criminal justice system in CSE cases as disempowering. A number of professionals drew explicit parallels between the dynamics intrinsic to abusive relationships and those characterising young people's engagement in aspects of criminal justice proceedings. Countering the loss of control young people currently experience is a vital aspect of upholding children's rights and safeguarding.

**25. A sense of justice:** Young people's perceptions and experiences of justice often differ significantly from a systemic definition of justice. The traumatic impact of participation in the court process, combined with disappointment around outcomes, led many experts by experience and professionals to question the benefits of engagement in the process. Is it necessarily the best thing for a child? Does it deliver justice and, if so, whose definition of justice?

**26. Policy and practice dissonance:** A striking finding of *Making Justice Work* is that the majority of measures identified by participants as likely to improve young people's experiences of criminal justice processes, are already recommended or feasible within the current policy and guidance context. They are not, however, consistently translated into practice; an observation supported by a wide body of research and review literature. There remains a clear need to bridge this gap and to ensure that stated entitlements and recommendations are effectively translated into exemplary practice when supporting all young victims and witnesses, irrespective of where they live or which professionals they engage with.

**27.** Six priority areas for change have been identified that reflect the priorities of the experts by experience, and are supported by professional contributions to the research:

- All decisions and actions should be underpinned by the principles of safeguarding and promoting the 'best interests' of the child and assessed against these baseline standards.
- All communication with young people should be underpinned by principles of accessibility, participation, transparency and respect. Communication should be proactively initiated in a timely manner and enable opportunities for meaningful dialogue.
- Complaints processes and other forms of redress must be accessible and meaningful for young people. Young people need access to informed independent advocacy to support them to seek redress when standards of engagement fall short of what should be expected.
- Wherever possible, decisions should be made with - rather than for - young people. Professionals should also take account of the evolving capacities of adolescents when considering the ways in which they can involve young people in decision-making processes.
- All relevant staff within the police, Crown Prosecution Service, Court Service, judiciary and relevant voluntary sector services should receive the training, supervision and support required to enable them to understand and respond appropriately to young people affected by CSE.
- Active consideration must be given to understanding the reasons why best practice guidance and policy is inconsistently applied within both investigation and prosecution processes, and too often relies on an individual's knowledge or commitment.



# 1 Introduction

This report presents the findings of *Making Justice Work*, a participatory pilot research project, exploring children's and young people's experiences of the criminal justice system in child sexual exploitation (CSE)<sup>3</sup> cases and the ways in which these can be improved. The research took place under the auspices of 'The International Centre: Researching Child Sexual Exploitation, Violence and Trafficking' (The International Centre) at the University of Bedfordshire and was funded by a central Research Investment Programme at the University.

## 1.1 The genesis of the research

*Making Justice Work* was developed in direct response to the identified priorities of young people, as articulated in a range of research and participatory consultation projects undertaken by The International Centre since 2008.<sup>4</sup> Over the course of this work, messages from young people repeatedly highlighted the disempowering and traumatic nature of their engagement in CSE related criminal proceedings:

*"People don't go to the police because when you go to the police it makes the situation 150 times worse. You have to go through it again and again"* (young service user in CEOP 2011:79).

*"If you tell an adult something then they kind of decide what's going to go on next... then police get involved and you might not want that... If it goes to court then you've got to say it in court and it's really hard"* (Alice, aged 15 in Warrington 2013).

Reflecting on these experiences, young people identified a pressing need to explore how investigative and court processes in CSE cases

could be improved (CEOP 2011; Jago et al 2011; WWFU 2011; Beckett et al 2013; Warrington 2013).

This critical need to improve victims' and witnesses' experiences in CSE cases has also been echoed in a series of other research, review and inquiry reports released post Operation Retriever (the first high profile CSE prosecution that concluded in 2011). Lessons learnt from this, and subsequent operations, have influenced both local and national discourse around criminal justice responses to CSE and informed the ongoing development and revision of policy and guidance documents.

With a small number of notable exceptions,<sup>5</sup> what remains largely absent from current discourse, however, are the voices of children and young people who have experienced the system as victims or witnesses in CSE related criminal proceedings. As young people themselves repeatedly tell us, this critical omission of service users' perspectives must be urgently redressed if their experiences are to be better understood and consequently improved. *Making Justice Work* seeks to begin to address this gap.

## 1.2 Contextualising the research

Any discussion of criminal proceedings in CSE cases must start with an acknowledgement that the vast majority of CSE related crimes may never be brought to the attention of the police. While a robust evidence base about the scale of under-reporting specific to CSE is currently lacking, the evidence that does exist clearly indicates that only a relatively small minority of cases are ever reported.<sup>6</sup> Furthermore, even when cases are reported to police, high attrition rates for sexual offences mean that only a minority progress to prosecution.<sup>7</sup>

<sup>3</sup> "Sexual exploitation of children and young people under 18 involves exploitative situations, contexts and relationships where young people (or a third person or persons) receive 'something' (e.g. food, accommodation, drugs, alcohol, cigarettes, affection, gifts, money) as a result of them performing, and/or another or others performing on them, sexual activities" (DCSF 2009:9).

<sup>4</sup> This includes initiatives undertaken through What Works For Us (WWFU), a network of CSE affected service users supported by The University of Bedfordshire in partnership with Barnardo's, ECPAT UK and the National Working Group. In 2011, WWFU took part in a consultation with CEOP that resulted in a chapter in their thematic review *Out of Sight: Out of Mind*. Following this work WWFU developed a statement of five priorities for change, two of which focused on the need to improve the experiences of victims in CSE related policing and court processes.

<sup>5</sup> See, for example, the Office of the Children's Commissioners Inquiry into Child Sexual Exploitation in Gangs and Groups (Bereelowitz et al 2013), the learning review conducted into Operation Kern (MacDonald 2013), the Real Voices report produced by Ann Coffey MP (Coffey 2014) or the 2014 Parliamentary Inquiry into the effectiveness of legislation for tackling CSE and trafficking, chaired by Sarah Champion MP (Barnardo's 2014).

<sup>6</sup> This is based on extensive evidence of low reporting rates for sexual offences generally. Government research estimated that between 75% and 95% of rape crimes are never reported (HMCPS/HMIC 2007). Specifically considering child sexual abuse (of which CSE is a form), a large scale study by NSPCC identified that 72% of sexually abused children did not tell anyone about their abuse (Cawson et al. 2000). Only 1 in 12 young people who participated in research into gang-associated CSE undertaken by The International Centre said they would tell anyone about such experiences (Beckett et al 2013).

<sup>7</sup> Government statistics report a sanction detection rate of 30% (34% for sexual activity with minors), with only 18% of the 53,700 sexual offences recorded by the police proceeded against at court (MoJ, Home Office and ONS 2013).

Bearing this in mind when reading this report is important. The *Making Justice Work* project represents data from, and relating to, a particular minority of young people affected by CSE. By some measures they represent the 'best experiences of the system' in that their abuse has been identified by statutory authorities with some form of action taken in regard to this. The nine young people who directly participated in the research represent a further minority within this, in that all were receiving support from a specialist CSE service and most had seen their cases progress beyond initial investigation. Furthermore, they represent young people who have felt able and willing not only to engage with lengthy criminal justice processes that we know to be extraordinarily painful and traumatic, but also to share their learning for the benefit of others. Setting the findings from this research against this context further reinforces the need to take these messages seriously. It suggests that there may be many more children and young people whose experiences of these systems are even more challenging and problematic than those captured within this research.

It is also important to recognise the changing climate into which this report is released; one of increasing acceptance of the need to improve both responses to CSE (across all statutory agencies) and all victims' and witnesses' experiences of the criminal justice system. There is a clear strategic commitment to addressing learning from high profile CSE inquiries and police operations, articulated across central government, the police, the Crown Prosecution Service (CPS) and the judiciary. A range of initiatives are being implemented in response to this, including updated policy and guidance;<sup>8</sup> the piloting of pre-recorded cross examination for young witnesses;<sup>9</sup> the development of specialist training for legal advocates led by Judge Rook<sup>10</sup> and a re-prioritisation of safeguarding and public protection within national and regional policing (HMIC 2014b; HMIC 2015a; HM Government 2015).

Whilst it is anticipated that these developments will contribute to improving children and young people's experiences of criminal justice processes in CSE cases, it is important to bear in mind the repeatedly evidenced challenges of translating legislation, policy and guidance into improved experiences for young people (Plotnikoff and Woolfson 2004, 2009; Hayes and Bunting 2013).

It is also important to recognise the challenges facing frontline professionals in a context of increased demand and reduced funding. Findings from a range of recent inspection reports and inquiries demonstrate that even where organisations have renewed their commitments to meeting the needs of young victims of sexual violence, such challenges mean that practice may still fall short of expected standards (HMCPSP/ HMIC 2014; HMIC 2014a; Jay 2014; HMIC 2015a; Oxfordshire LSCB, 2015).

The existing body of evidence supports the findings of *Making Justice Work*, specifically those relating to an ongoing dissonance between the commitments articulated in policy and guidance and the reality of working practices on the ground. It serves as a reminder that while current initiatives, and the climate which supports them, represent an important and welcome opportunity to address the issues raised by this report, one must never lose sight of the need to repeatedly return to voices and experiences of those young people at the centre of these processes. These voices represent a critical check on the degree to which rhetoric is being translated into reality and a key means of demonstrating accountability.

Although often critical in their commentary, participants recognised the existence of pockets of good practice and were keen to see these implemented on a wider scale. The findings of the research are presented in a similar spirit; in the hope that they will provide helpful insights for the wide range of current initiatives for change within this field.

### 1.3 Project overview

*Making Justice Work* sought to respond to the aforementioned gaps in knowledge and understanding, creating a channel through which young people could share their experience-informed perspectives on improving criminal justice processes for other victims and witnesses in CSE cases.

Funding was received from University of Bedfordshire Research Investment Programme and the project ran from September 2013 to October 2014. Though small scale, the work is one of the first published pieces of UK research that specifically explores investigative and court

<sup>8</sup> For example: CPS (2013a) CPS Guidelines on Prosecuting Cases of Child Sexual Abuse; Criminal Practice Directions 2013; Ministry of Justice (2013a): Revised Code of Practice for Victims of Crime (Victims' Code); Ministry of Justice (2013b) The Witness Charter and forthcoming revised Achieving Best Evidence (ABE) guidance.

<sup>9</sup> The Ministry of Justice (MoJ) is working with the judiciary, Her Majesty's Courts and Tribunal Service, ACPO and the CPS, to establish pre-trial cross examination under Section 28 of the Youth Justice and Criminal Evidence (YJACE) Act 1999. The pre-trial cross-examination pilot is relevant for young (under 16) and vulnerable witnesses and is taking place in Leeds, Liverpool and Kingston-Upon-Thames Crown courts ([www.gov.uk/government/news/first-victims-spared-harrowing-court-room-under-pre-recorded-evidence-pilot](http://www.gov.uk/government/news/first-victims-spared-harrowing-court-room-under-pre-recorded-evidence-pilot))

<sup>10</sup> Judge Rook is leading a training initiative alongside the Advocacy Training Council (ATC) to develop cross profession training for prosecution and defence advocates and solicitors in order that they can improve their approach and understanding of the needs of vulnerable witnesses and defendants in court. The first pilot of the course is in May 2015.

proceedings in CSE cases from the perspective of children and young people. As such it offers a critical and unique contribution to the emerging body of professional-informed discourse around these issues.

The research sought to answer two inter-related research questions:<sup>11</sup>

- How are investigative and prosecution processes experienced by young people (as victims and witnesses) in cases relating to CSE?
- What are the opportunities for change and improvement within existing practice and policy implementation?

## 1.4 Ethics and oversight

A project such as this inevitably entails many ethical considerations, including those relating to safeguarding and welfare, participation and representation. In recognition of this, and in line with all work undertaken by The International Centre in this field, ethics was viewed as an ongoing reflexive concern, rather than a discrete procedural requirement.

A detailed ethical protocol was developed for the work.<sup>12</sup> This was approved by The Institute of Applied Social Research Ethics Committee and the University-wide Ethics Committee at the University of Bedfordshire at the outset of the project.

An independent advisory board was developed to oversee the project and provide guidance on emergent ethical issues throughout. This group included representation from subject experts within legal and social research, social care, policing, an ex-service user and staff from specialist CSE services.

A key aspect of the ethical approach to this work was a commitment to only undertaking direct work with young people through partnerships with specialist CSE projects in order to ensure that adequate safeguarding and support structures could be provided. Three specialist projects were identified to form these partnerships. Funding was provided to enable them to identify and risk assess potential participants, actively facilitate their engagement and deliver ongoing support to young people for the duration of the project, dissemination and beyond. All three projects were drawn from the voluntary sector and included representation from Barnardo's, the Children's Society and Safe and Sound.

## 1.5 Methodology

The project started with a literature review of the policy context and existing evidence base on young people's experiences of investigative and prosecution processes (as victims of CSE and other forms of sexual violence and abuse) within the UK. The aim of this was threefold:

- to provide a knowledge and policy context for the primary data design, collection and analysis;
- to avoid duplication of existing work, particularly collection of sensitive information from young people; and
- to inform the development of data collection tools (e.g. vignettes; a hypothetical journey through the system) for engaging young people and professionals in the research.

This was followed by primary data collection with four distinct groups of stakeholders:

- nine young people from three specialist CSE projects in different parts of England, with experience of investigation and prosecution processes relating to CSE;
- two specialist peer supporters, working alongside a specialist Independent Sexual Violence Advisor (ISVA) to support other young people through criminal justice processes in CSE cases;
- 29 practitioners from a range of disciplines, with experience of supporting young people through investigation and prosecution processes relating to CSE; and
- nine professionals working nationally and/or with strategy or policy responsibility for investigation and prosecution processes relating to CSE.

### 1.5.1 Young people's involvement

The research was grounded in the recognition that young people hold unique knowledge about the experiential aspects of engaging with criminal proceedings as victims and witnesses. As such, they have associated unique insights into the means by which these processes could be improved. The research methodology was therefore shaped by an attempt to facilitate opportunities for young people to share this knowledge, acting as 'experts by experience'<sup>13</sup> and using participatory approaches which enabled them to exert influence and control over the research agenda, data collection and analysis, in safe and supportive ways.

<sup>11</sup> The project also sought to explore the feasibility of involving service users ethically and safely in research on this topic, and to pilot potential means by which this could be facilitated. Reflections on this part of the process will be published separately.

<sup>12</sup> A copy is available on request from the authors.

The use of participatory approaches was designed to promote collaborative working and avoid replicating the problematic power dynamics that young people describe as inherent within their experiences of the criminal justice system. It is rooted in an understanding that the involvement of children and young people in decision-making about their lives supports the wider realisation of their rights, including their right to protection (Lansdown and O’Kane 2014). Consulting and collaborating with children and young people not only furthers our insight and understanding, but can help to challenge cultures of impunity in which abuse may flourish.

Meaningful and ethical engagement with children and young people, however, requires significant time and effort and intensive partnership work with participants and those services supporting them. This was particularly important in this study given the sensitivity of the research topic, the potential vulnerability of participants and the associated need to prioritise their best interests. Five months of planning and preparation preceded any data collection with young people within this project. Key tasks within this included:

- exploring and evaluating a range of options for engaging young people in the research;
- the development of age and subject appropriate research tools;
- obtaining all necessary ethical approvals for the research;
- selecting and risk-assessing specialist CSE projects through which to engage young people and preparing them to support the research;
- identifying and anonymously risk-assessing potential participants;
- ensuring appropriate supports were in place for their engagement and beyond, and providing the necessary funding to resource this; and
- preliminary meetings with potential participants to explain the research, familiarise them with the research team and address any questions or concerns.

Following these processes, nine young people, aged 14 to 19 years, were engaged as ‘experts by experience’ in the research. They were identified and supported through three CSE projects in different areas of England. Across the three

groups there were eight young women and one young man, from a range of ethnic communities.

### **A note about the background and demographics of the experts by experience**

As research repeatedly demonstrates, CSE can affect any young person regardless of gender, ethnicity or background. While a number of factors may increase vulnerability, there is no one ‘typical young person’ whom these issues affect.

The nine experts by experience who took part in this research demonstrate this point well. Although all share the experience of using specialist CSE services, and have at some stage been characterised as ‘victims or witnesses’ within CSE criminal justice proceedings, they come from a range of backgrounds and have a range of experiences.

Their experiences as victims or witnesses in CSE criminal justice proceedings are just that – experiences, not their identity. It is crucial that their identities are never defined by or limited to this, masking their diversity, complexities and strengths. For this reason, during the latter stages of the project, the group were asked to consider sharing some broader insights into their lives and their relationship to this project – facts which would not compromise their anonymity, but provided a fuller view of who they are. The insert on the right presents a composite of the reflections they shared for this purpose.

### **Data collection with young people**

Although specific arrangements differed across the three groups of young people,<sup>14</sup> all data collection took place over a series of workshops. In each case, this involved an introductory session, participatory data gathering workshop(s) and feedback/analysis sessions. All workshops were delivered with local project workers present and facilitated by two staff from The University of Bedfordshire and/or a facilitator from Abianda.<sup>15</sup>

The workshops were designed to enable young people to explore CSE investigative and prosecution processes in terms of a ‘narrative journey’, considering ways to improve the experience for young people at each stage. A range of qualitative techniques were used including vignettes, discussion exercises, forum theatre and ranking exercises.

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<sup>13</sup> ‘Experts by experience’ are people who have direct experience of an issue or services, who work with related research, practice and policy organisations in a range of roles to inform and improve learning, policy and practice development. It is a term predominantly used with adult service users within health and social care (see for example SCIE and the Care Quality Commission). In this project the term was chosen, from a range of alternatives, by young participants who felt it represented their role most positively. It was favoured because it acknowledged their direct experiences of the issues addressed in the project, while avoiding more negative and limiting language such as ‘service user’ or ‘young victim or witness’.

<sup>14</sup> For example in one site the data gathering workshops took place during a specially organised residential.

<sup>15</sup> Abianda were engaged to provide a therapeutically informed facilitator with a specialism in group work with victims of sexual violence. Although the research process was explicitly not therapeutic, this expertise helped ensure the design of a process that was safe, supportive and able to respond to emerging risks.



# Making Justice Work Experts by Experience: In our own words

## About us:

We are male and female, smart and caring, funny and beautiful, respectful and intelligent. We come from different communities and different parts of the country. Among us there is a Grade 7 pianist, a photographer, 'a mummy's boy', an actor or two, music lovers, an artist, parents, animal lovers, and national award nominees and winners. Some of us are confident and outgoing, some of us are loud and some of us are good listeners. Some of us are small (and can laugh about it) and some have dyed our hair many colours. Some forgive easily and some lack common sense! We've all experienced different things and come from different backgrounds. We are different...and unique but yet we're also 'just like every other boy and girl'...We each have our own experiences. We like helping others with our skills and we want to make things better.

## Why we took part:

- To try to change things for another generation and for young people who are struggling with similar experiences relating to the criminal justice system and sexual exploitation;
- To give first hand experiences and examples;
- To make sure young people's voices are heard and listened to;
- To get young people's emotions out there;
- To share experiences with other people in order to influence change;
- To offer opinions and advice about what needs to change and what is good;
- To meet new people and talk to a range of different adults;
- To get feelings across;
- To help to make other young people speak out;
- To make it simple, on how us as young people - how we actually feel; and
- To make sure that no-one else has the same problems I went through and to speak out for victims.

## What we brought to the project:

Advice and criticism; Friendliness; Communication skills; Personal experiences; My experiences and opinions on the systems and organisations; A clear voice; New ideas for improvement; Different perspectives; Reflections on our experiences; My feelings - including anger; Listening and reflection; Experiences of myself and other young people I have met; New ideas that many professionals didn't even think of - like the aftercare; How it feels to be a young person and have to go through the system; Warmth, friendliness, confidence; Courage.

## Who we speak up for and represent:

- Boys that have suffered with sexual exploitation to show that it is just as much of an issue whether you are male or female;
- For myself and my project and also young people who have had similar experiences but struggle to speak up;
- The young people that I know that have had experiences with court;
- Other young people and also older people who are victims and witnesses;
- People that have been through issues and come back stronger than before; and
- The people who are too scared or shy to speak up about their experiences.

The design of data gathering activities and questions specifically focused on identifying improvements to the system, to enable young people to participate in the project without reference to their own personal circumstances. However all participants chose to share some aspects of their personal experiences of the criminal justice system (as victims or witnesses of CSE) and expressly wished to see these included in the research.

Data were recorded on audio-recorders and flip-chart sheets which were then photographed. In one group, some of the experts by experience chose to audio-record individual narratives away from the group setting, enabling them to share fully anonymised accounts of their experiences. In addition, one group of participants produced a short animation to summarise themes emerging from their workshops.<sup>16</sup>

### 1.5.2 Data collection with peer supporters

Two young people who volunteer as peer supporters took part in the research. These young people, like the 'experts by experience', have been supported by a specialist CSE service and have direct experience of the criminal justice system. They volunteer to help others affected by CSE going through the court system, helping them to understand what to expect. They have undergone specialist training and work within clearly defined parameters, supervised by a Barnardo's ISVA. Their unique experience and perspective allowed them to reflect on common themes identifiable within the experiences of the range of young people they had supported. They also kindly provided the researchers with access to a range of materials they had already produced on similar themes, including written materials for other young people and speeches from their campaigning work.<sup>17</sup>

### 1.5.3 Data collection with professionals

A total of 38 different professionals were engaged in the research through focus groups and individual interviews. Two focus groups, broadly representing the North and South of England, were conducted with 'frontline' practitioners from a range of disciplines.<sup>18</sup> A further focus group was conducted with professionals with a national and/

or more strategic remit.<sup>19</sup> A fourth focus group and three individual interviews were conducted with staff from the CSE services that facilitated young people's engagement in the project.

With the exception of the specialist CSE services, professional participants were purposively sampled to include relevant stakeholders from different types of service; different roles (practice, management and policy); different geographical locations and different experiences of working within the criminal justice system in cases relating to CSE. This enabled us to identify key shared issues or outlying perspectives across these stakeholders and to contextualise young people's contributions within a broader frame of reference.

Professionals' participation was structured around an anonymised thematic analysis of young people's data with participants being:

- asked to reflect on the degree to which the issues raised reflected their broader experience base;
- offered the opportunity to raise additional points of interest or concern;
- asked to consider potential responses to these issues; and
- utilised as a source of knowledge around relevant developments in process.

## 1.6 Analysis

Given the qualitative nature of data collection, data were interrogated utilising qualitative analysis frameworks. Following transcription and initial open coding, all the data contributed by young people and professionals were dualistically coded according to:

- the sequential 'stages' of young people's journey through the criminal justice process (in keeping with the 'journey' approach adopted during data collection); and
- cross-cutting thematic issues identified through the literature review, feedback workshops with young people and professionals and open coding process.

This process facilitated a triangulated analysis of the data, identifying similarities and differences across different participants, illuminating key points of learning of relevance across the system, contextualised with reference to the

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<sup>16</sup> This will be available to view at [www.beds.ac.uk/ic](http://www.beds.ac.uk/ic)

<sup>17</sup> For more information see Guest Blog 20/8/14 from NSPCC Order in Court Blog: <https://nspccorderincourt.wordpress.com/>

<sup>18</sup> This included representation from the police, social work, specialist CSE voluntary sector projects, the Violence against Women and Girls sector, Registered Intermediaries (RIs) and Independent Sexual Violence Advisors (ISVA's).

<sup>19</sup> This included representation from the police, academia, Victim Support and leading children's charities working in the field of CSE. Representatives from other elements of the criminal justice system were invited but unable to attend, however one did avail of the opportunity to undertake an individual interview.

existing evidence base. The coded data were then reviewed in relation to the content of relevant policy and guidance documents. This secondary process enabled us to draw out to what degree the perspectives of the experts by experience, peer supporters and professionals who participated in the research aligned to the existing policy context, and how their experiences reflected the effective (or otherwise) implementation of current policy and guidance.

The emergent themes from analysis were also checked with the experts by experience from all three sites. This provided them with an opportunity to validate, challenge and influence initial research analysis. It also provided an opportunity for them to hear and respond to messages emerging from professionals. Additional data generated during these sessions were subsequently integrated into the analysis framework.

## **1.7 Reflections on the potential limitations and wider applicability of the findings**

The fact that data collection tools were designed around the experts by experience's recollections and comprehension of their experiences of the system – rather than a procedurally driven mapping exercise – means that some stages of the process (those that they were unaware of, could not recall and/or chose not to) are either omitted from, or only briefly referenced within, young people's narratives of their journeys through the criminal justice process. Where possible, these gaps are explored within the professional data, but it is important for the reader to note that particular (behind the scenes) elements of the criminal justice process remain unreferenced within the work, having fallen outside the parameters of data collection.

It is also important for the reader to bear in mind the qualitative nature of the research when reading this report. Qualitative research yields rich insights into participants' experiences and perspectives but does not easily lend itself to quantification. This can be particularly true of data collected in group settings and those settings where decisions about what to share, or what not to share, are left entirely to participants; both of which apply to this research project. The decision to refrain from asking participants to explicitly contribute their thoughts or experiences on any specific issue – should they not freely do so – was a critical one in terms of ensuring a safe and ethical approach to this study. It does however mean that we cannot quantify the proportions of

young people with experience of any issue, as we only know of those experiences that participants felt comfortable freely sharing within the group environment.

Finally, the authors recognise that the sample size in this pilot study means that the findings cannot be assumed to reflect the experiences of all young people engaged as victims or witnesses in criminal justice proceedings related to CSE. However, the commonality of the themes identified across the experts by experience's, peer supporters' and professionals' contributions, the analytical triangulation this facilitated and the replication of learning from other key studies in the field (see section 1.2) does confirm the presence of critical learning within the study. This is particularly true in relation to the relatively unique contribution the study makes to the existing body of literature in terms of the prioritisation of young people's experience-based observations and recommendations.

## **1.8 Structure of the report**

In keeping with the approach adopted throughout this research project, the main findings of the research are presented sequentially according to the experts by experience's narratives of a young person's journey through the system. This starts with the investigative process (chapter 2) and is followed by decision-making and preparation for court (chapter 3), the court process (chapter 4) and post court (chapter 5). Each of these findings chapters includes a brief overview of relevant policy and guidance provisions, presented as context to the primary data gathered from research participants. In line with our explicit aim to represent the (frequently excluded) perspectives of young people, the experts by experience's contributions are given primacy throughout. Professional data are incorporated in a secondary contextualising role, alongside references to learning from existing literature.

Chapter 6 considers a number of key themes that hold resonance across the different stages of the journey, previously explored in chapters 2 to 5. These are issues that cut across both investigative and prosecution processes and the different professionals that young people encounter along their journey. These inform the areas for improvement, presented in the final chapter of the report.

## 2 The Investigative Process

Young people's initial involvement in criminal proceedings relating to CSE is predominantly centred round their contact with the police. This engagement with the police can involve many different stages including:

- initial questioning to elicit a brief account of what has taken place ('initial report');
- providing a witness statement;
- completing a victim personal statement (VPS);
- undergoing a forensic or medical examination;
- providing police with access to other relevant physical evidence; and
- undertaking an Achieving Best Evidence (ABE) interview.

Depending on the nature of a case and local availability, young people may also encounter a range of other organisations and professionals during the investigative process. This can include referral to a Sexual Assault Referral Centre, Victim Support or an ISVA.<sup>20</sup> It can also involve the appointment of a Registered Intermediary (RI),<sup>21</sup> although none of the experts by experience identified personal experience of this.

A series of recent policy and guidance documents have clearly articulated expectations around young victims' and witnesses' entitlements within these processes. Much of this is premised on recognition of the additional vulnerability of both children and young people and victims of sexual violence within criminal proceedings.<sup>22</sup> Key principles currently outlined in guidance for supporting young people as victims and witnesses during the investigative process in CSE cases include:

- early identification, and ongoing review, of victim and witness support needs;
- clear explanation of processes and requirements;

- provision of information about appropriate avenues of support;
- appropriate facilitation of supporters within the investigative process;<sup>23</sup>
- ongoing communication about the progress of the case; and
- use of specially trained officers (MoJ 2011; CPS 2013a, 2013b; MOJ 2013a; College of Policing 2014; MoJ 2014b).

The remainder of this chapter explores the degree to which the entitlements above were realised within young people's experiences of investigative processes. In line with the participatory ethos of the work, the chapter focuses on those elements of the process that the experts by experience chose to discuss rather than attempting to provide a detailed step-by-step account of the investigative process. The provision of charging advice by the CPS, for example, although a critical aspect of this phase of criminal proceedings, is not included on the basis that neither the experts by experience, nor the professionals who participated in the study, offered comment on this element of the process within their relative contributions.

The experts by experience prioritised four main elements of the investigative process in their discussions:

- early contact with the police;
- the process of evidence gathering, specifically ABE interviews and the removal of personal possessions;
- communication about the progress of investigations; and
- the impact of investigative processes.

Findings relating to each of these are presented in turn in the remainder of this chapter.

<sup>20</sup> ISVA's "are victim-focused advocates who work with people who have experienced sexual violence, helping them to access the support services that they may need. They are independent from the police and are distinct from therapists, counsellors and Registered Intermediaries." Their role "includes making sure that victims of sexual abuse have the best possible practical advice on: the counselling and other services available to them; the process involved in reporting a crime to the police; and taking their case through the criminal justice process, should they choose to do so" (CPS 2013a: para 23/24).

<sup>21</sup> An RI is defined as a "person who facilitates two-way communication between the witness and other participants in the criminal justice process to ensure that communication with the witness is as complete, coherent and accurate as possible" (MoJ 2012:9).

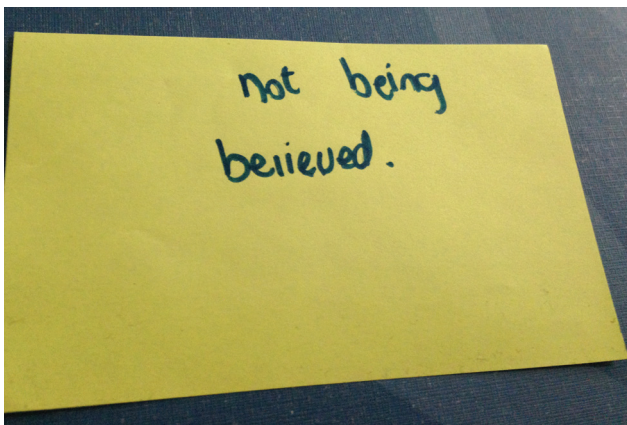
<sup>22</sup> Within criminal proceedings relating to CSE, all victims or witnesses under 18 years will be defined as vulnerable by virtue of their age (Sect. 16 Youth Justice and Criminal Evidence Act 1999, as amended by the Coroners and Justice Act 2009). In addition victims aged over 18 who are victims of a sexual offence should automatically be considered to be "intimidated witnesses" and thus eligible for the same support (MoJ 2013a).

<sup>23</sup> The term 'supporter' in this context refers to a person known to the witness who may be present during the interview to provide emotional support and/or the person whose presence provides emotional support to the witness when giving evidence in court (MoJ 2011).



## 2.1 Early contact with the police

Young victims or witnesses in CSE cases can become involved with criminal proceedings through a variety of routes. They may 'self present', having recognised the abuse they are experiencing and chosen to approach the police about this. They may (knowingly or unknowingly) disclose details of CSE related crimes to another professional who subsequently shares this information with the police. Contact may also be initiated by the police on the basis of information provided by other victims or witnesses, without any disclosure or recognition of the abuse on the part of the young person.



Young people's route into the system – specifically the degree to which they identify themselves as a victim of CSE and/or want information passed to the police and acted upon – will inevitably influence how they experience initial police contact. So too will the way in which police recognise the significance of these perspectives and adjust their approach accordingly, a flexibility that the experts by experience noted to be largely absent from their initial encounters with the police.

One young expert by experience commented positively on her early contact with the police although, in doing so, recognised how exceptional her experience was among the group:

*"I think my police officer was actually already – compared to what everyone else is saying – she was actually alright but I think it also depends on the area you're in. I think mine dealt with it really well, she was dead nice" (young person D).*

For the remainder, a lack of sensitivity and respect were observed to be the hallmarks of their initial encounters with the police, irrespective of how these were initiated. Examples given described negative attitudes and questioning styles which

left young people feeling judged and neither respected nor believed:

*"You can tell just by the way they're talking to you, the respect they have for you. It just says it all" (young person G).*

One young person explained how she felt "worthless, insecure, scared and angry" following her initial questioning by the police while another noted being described by police officers as "an attention seeker". A third young woman audio-recorded the following reflections on her experience of initial police involvement, following her disclosure of multiple perpetrator rape by peers:

*"The police came over, they were unprofessional. There was two men, not a lady professional. They was asking rude questions, making the person feel worthless, insecure, scared, angry at what the police asked. They asked questions 'do you like sex?' and also talking about themselves and about what they did when they was young, making her feel like she's not a victim; it's her fault. The police wasn't doing their job, because they was laughing and sat slouching and dossing, looking like they weren't bothered...it made the girl want to give up with the case and the investigation...The school contacted the police. It wasn't actually her wanting to get involved with the police but she pulled up the courage and tried her best to move on from this. But the police wasn't even letting her have her say; they just were talking about themselves...She just wanted to move on and forget about it and the police just made it 10 times worse for the girl. That's why most teenagers wouldn't go to the police because they feel scared, they feel like they're not being listened to...My experience made me feel so bad, really bad, I even self-harmed...The police should listen to what the young person has to say...I feel like I can't go to the police no more because I'll just get laughed at; I'll get judged and get hurt really deep down. I just want the police force to actually do a better job than they do now, because they're here to help people and make their lives better but they could be making it worse" (young person C).*

Many of the professionals who participated in the research shared similar concerns about young people's early police contact, reiterating messages about the lack of specialist skills and understanding of initial response teams and the formative nature of this on young people's willingness to engage further in these processes:

*“The cases I’ve dealt with, it’s often the initial response team or somebody that’s just on desk that day...and they’re just not prepared for what you’re going to say...and that initial response is often treating them like the perpetrator or they’ve committed a crime” (focus group 1).*

*“One of our young women has had a horrific time ... police came and they literally, on their first meeting, completely mocked her because they said ‘it was her fault’ – ‘was she leading them on ‘cause she was drunk?’ ... That had a massive impact on her because now she thinks ‘well maybe it was my fault?’ ‘I did have a bit to drink so maybe I led them on and that’s what boys do?’ kind of thing and ‘actually it’s alright for boys to do this’” (focus group 4).*

These messages are consistent with those recorded in a range of recent serious case reviews, research and inspection reports, which present examples of young people, victimised through CSE, being characterised as culpable or lacking credibility by professionals responsible for their safeguarding (Beckett and Warrington 2014; Coffey 2014; HMIC 2014c, 2014d, 2015a; Oxfordshire SCB 2015). This body of work highlights the need for, and benefit of, training, effective supervision and ongoing practice review to address these issues.

### **2.1.1 Differential treatment**

Young people’s experiences were noted to be influenced not only by the experience and understanding of different police personnel, but, in some cases, by young people’s personal biographies. There was a consensus across all three groups that young people were treated less favourably by adults. In addition, two of the experts by experience specifically remarked that they felt their background or existing vulnerabilities negatively informed how they had been treated or viewed by police:

*“I don’t really like the police because, the way they handle stuff, they’re not professional... Like police officer saying, ‘Oh that girl goes missing’, chatting behind my back, not really professional” (young person C).*

*“She [the police officer] tried to blame my upbringing for the people that I was associating with and stuff. She said because I grew up without my dad being there...I’d always had an older boyfriend to have a father figure, and she kind of like blamed*

*me for what had happened” (young person H).*

Both the literature review and evidence from the professionals who participated in the research similarly indicate that certain young people may experience more negative treatment than others; specifically those in care, those with a history of going missing, those from difficult family backgrounds and/or those with previous police contact (Cantrill 2011; Beckett and Warrington 2014; Coffey 2014; HMIC 2014c; Jay 2014).

### **2.1.2 Accountability**

The lack of opportunities for redress, in scenarios such as those outlined above, was an issue of serious contention for the experts by experience, many of whom perceived that the police were ‘above the law’. Structures of accountability, and implementation of consequences for a failure to act appropriately, were identified as issues of critical concern:

*“I think there should be some sort of recording and they have to hand it in to the boss and the boss goes through it and if they’re horrible they should consequent [sic] to that” (young person F).*

The Ministry of Justice’s (2014) Commitment to Victims document explicitly notes the need for improved accountability and confidence in the system, identifying “increased transparency and accountability to ensure criminal justice agencies are held to account for the services they provide to victims” as one of its five high level commitments (MoJ 2014a:2). The need for further progress within this field is also highlighted in a range of reports, released in the early months of 2015, including the Victims’ Commissioner’s review of complaints procedures (Victims’ Commissioner 2015), the Victims’ Taskforce report on a victims’ law (Victims’ Taskforce 2015) and the HM Government Tackling Child Sexual Exploitation report (HM Government 2015).

### **2.1.3 Recognition of, and response to, vulnerability**

As previously highlighted, current guidance emphasises the importance of identifying victim and witness support needs as early as possible and keeping this under ongoing review. Police are required to formally record vulnerability when completing an initial witness statement which should, in turn, prompt a full consideration of required support during ongoing investigation and prosecution, and ensure that investigative strategies are mutually supportive of victim care strategies. Under the enhanced service for

vulnerable witnesses, this should include:

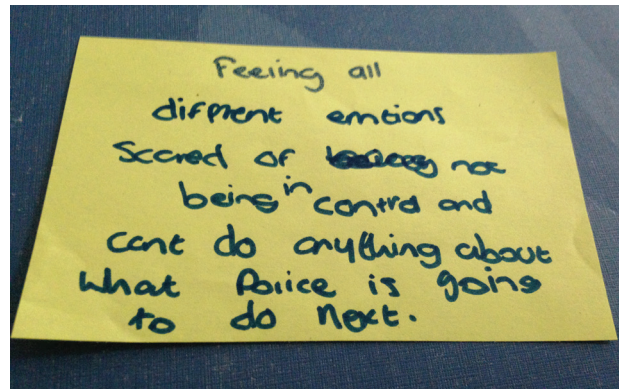
- completion of a 'witness assessment for special measures'<sup>24</sup> in anticipation of a young person's attendance at court (MoJ 2011);
- proactive planning of the ABE interview process; and
- consideration of the use of a RI to facilitate communication (now recommended practice in all sexual abuse cases) (CPS 2013a).

It is clear from young people's comments above that they felt their vulnerability was frequently not recognised in their initial encounters with the police. What is less clear is the degree to which procedures related to the enhanced service for vulnerable victims and witnesses were being implemented behind the scenes. The experts by experience's observations on the practical conduct of ABE interviews (see section 2.2.1) and the lack of reference to any RI involvement in their cases would however suggest that good practice is not yet being routinely implemented.

This assertion is supported by the evidence from professionals. Each of the four focus groups commented on some frontline police officers' failure to recognise, and appropriately respond to, the vulnerability of the young people they were engaging with. They noted the need to ensure that the good practice they observed in some officers became commonplace across all. Several professionals also raised concerns about the use of derogatory language in initial police reports which subsequently risked undermining a victim's credibility in court. Similar observations about inadequacies in responding to the needs of victims of abuse are made in a series of other recent studies (Cantrill 2011; Smeaton 2013; Coffey 2014; Jay, 2014). Recent inspection reports similarly demonstrate that police processes in place to aid the early identification of, and support for, vulnerable witnesses are inconsistently adhered to, leading to related entitlements being overlooked and subsequent delays to cases progressing to court (CJJI 2009, 2012; HMCPSI/HMIC 2014).

### 2.1.4 Engagement and control

A further common theme, expressed by all three groups of young people in their discussions around early contact with the police, was the perception that engagement with the police could catalyse a range of processes over which they had little or no control. As one young person observed "from the minute you contact the police – till like even the sentencing – you lose control of anything that's about to happen" (young person H).



Reflecting the contributions of both the experts by experience and professional participants, a 2015 Victims' Commissioner's report similarly observes this loss of control. It describes victims being "catapulted into the system", feeling "forgotten" in the process or feeling that they "only matter until the court case is over" and directly relates this to the potential for re-victimisation and trauma (Victims' Commissioner 2015:8).

Several of the experts by experience also reported losing control in relation to their choice as to whether or not to engage in criminal proceedings. Three expressed feeling pressured to engage with an investigation through guilt or fear – rather than choice – and being unaware about their rights in relation to this:

*"The case I was involved in was really massive, there was a lot of people involved... I was a witness... The police make you feel bad, you should do it for all the rest of the victims and all this. They try and call you selfish – in a polite way" (young person F).*

*"I was scared at the time, and they said 'If you don't tell us anything, we're going to get the manager.' The manager came in and started shouting at me – the police manager – a big guy... He started having a go at me – 'if you don't tell us where you've been' and stuff like that. I just wanted to talk to one person, and there were so many police officers around me at that time. They asked so many questions. I couldn't even see my mum, they wouldn't let me see my mum" (young person C).*

There was a consensus across all three groups of experts by experience that their capacity to be involved in decision-making processes was overlooked based on over-simplistic ideas of them as vulnerable or young children:

<sup>24</sup> Special Measures refers to those measures and practical steps, specified in the Youth Justice and Criminal Evidence Act 1999 which may be ordered to support an eligible witness to give their best evidence within court. A more detailed description is provided in section 4.4.



*“The police and that, they talk behind your back. I know this is going to sound harsh but they do. If they want to discuss something, they won’t discuss it with you. They discuss it with their colleagues. They treat you like a little kid, but we’re not a little kid. We have ears like, we can hear... and you just feel small, you feel small. They make you feel uncomfortable. It’s just embarrassing” (young person E).*

Whilst recognising they were still children in need of protection, both the experts by experience and the professionals who participated in the research repeatedly highlighted the need for police – and other criminal justice professionals – to recognise the need for, and value of, a different approach when engaging with adolescents to that employed with younger children.

### **2.1.5 Consistency and expertise of personnel**

Another central concern for the experts by experience was the lack of consistency of personnel involved in their cases. Not only did this contribute to a lack of clarity about the process of investigation, it also compounded distress by requiring them to recount experiences of abuse multiple times:

*“Sometimes you have to keep retelling your story over and over again to different police officers because they keep switching and assigning different officers to your case” (young person A).*

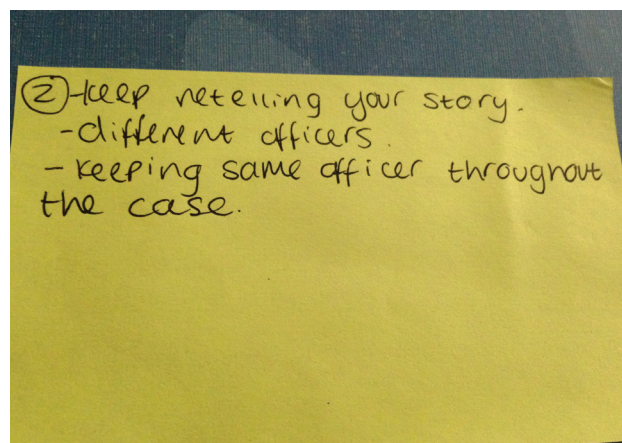
*“I just kept on meeting different people and I didn’t know what was happening” (young person I).*

*“I had two [officers] and then they got changed to a different – what seemed to me to be more of an important case – so then there was like a man who came on his own and he told me that he was would be working alongside another woman – but she didn’t come – but then it got passed to another woman... So then, then next – the man after that – after the two officers – he just came and he introduced himself and said that he would then be in charge of the case – but then – and then I had another woman who came – but then she introduced herself but she was really horrible” (young person H).*

Both the experts by experience and professionals reflected on how a young person’s experience of the police was dependent not only on the number of individuals involved, but also on the approach and expertise of these individuals and

the wider context of victimisation that was being investigated. To expand on the latter, where CSE occurred alongside other crimes (such as firearms offences) and was being investigated by non-specialist CSE/sexual abuse teams there was a perception that sexual offences were sometimes de-prioritised within these investigations.

This is not to say that investigation by a specialist CSE or sexual abuse team guarantees a more positive experience. Whilst some specialist teams were cited as examples of good practice irrespective of which member of the team led the investigation, several professionals commented on the variation of approach across teams. Overall the picture presented was one where young people’s *“experience of the process very much depends on the individual [officer]”* (focus group 3). In contexts where police officers regularly change role and specialism, any reliance on particular individuals was noted to hold limited benefits. Given these findings, it is perhaps unsurprising that early police contact has been identified as a key point of attrition in cases of sexual violence involving young victims and witnesses (Bunting 2008).



## **2.2 Evidence gathering**

Whilst the evidence gathering phase of investigations is inevitably a complex and multi-faceted process, two main aspects of this were identified as particularly significant for young people – their experiences of ABE interviews and removal of personal possessions. These are explored in turn below.

### **2.2.1 ABE interviews**

ABE interviews are video recorded interviews designed to support vulnerable and intimidated victims and witnesses to provide reliable and accurate accounts of their victimisation,

in keeping with their best interests and in a way which is fair. They serve a dual purpose; initially being utilised as an investigative tool and subsequently being shown as evidence in chief within court. Many young people did not, however, fully understand the significance of this dual purpose during the initial video recording.

ABE interviews are the subject of extensive guidance and related training which acknowledges the sensitivity and challenges facing young people and details good practice in both interviewing victims and preparing them to give their best evidence in court (MoJ 2011; CPS 2013a). Though the guidance is only advisory, significant departures from it may have to be justified within court and the variable quality of ABE interviews to date has been called into question by the judiciary (ACPO 2013; HMCPSI/HMIC 2014).

A common theme across all of the experts by experience's discussions about ABE interviews was that of intense embarrassment. In part this was described as the inevitable consequence of having to recount experiences of abuse to strangers: "You just feel awkward. Like it's not really a great thing to talk about and you just feel awkward and embarrassed" (young person A). In part, however, it was also noted to be a result of the conduct of the interviews in terms of the biography of the interviewer, their interviewing style, their (lack of) preparation and the support provided:

*"I found some of the questions in mine like really to be awkward – like I had a male that was doing my interview and some of the questions he was asking me – I was a bit like – I knew I had to answer it – but I didn't really want to answer it"* (young person F).

*"It's just the way the police handled this, it's not very professional and they made me feel insecure and I guess ashamed of myself because basically I had to start all over again on the interview. And I didn't want to because I felt embarrassed anyway as it was. And just people walking in and out of the room, and then someone at the end of it all, someone just overlooking"* (young person D).

*"I had seven video interviews – different ones and they were all about 4 or 5 hours long. The first one I wasn't in the children's unit, I just went to a normal adult video interview thing and just basically got told I was wrong and I was lying and things because of the dates. You had to go back and say some dates"* (young person G).

The experts by experience commented on the anxiety they felt about 'getting it right', with several recounting feeling pressured to give the account they felt the interviewer wanted, rather than the one they were comfortable giving. They also repeatedly commented on a fear of being judged, which inevitably influenced their readiness to share details of their experiences.

These observations reflect a point raised by several professionals about the power dynamics present within ABE interviews and the impact that has on young people's need to display compliance:

*"There's also that power thing, that [the young people] don't want to disagree with the police officer so I see them often – just saying yes...you see it get used in court... they use that against them"* (focus group 3).

Although young people clearly understood that there were legal restrictions on how interviews could be conducted, many questioned whether the approach, setting and level of formality they had experienced had enabled them to provide their best evidence:

*"They should just leave you to say what you need to say instead of disrupting you mid-flow 'cause then you lose it and have to start again. I don't mind questions being asked – 'could you elaborate on that?' or 'could you tell me that?' – I don't mind that, but let me finish my story first"* (young person F).

*"I think you've got to feel – you're never going to feel comfortable – but you've got to feel comfortable to a point – to give the best evidence that you can"* (young person I).

The style of questioning adopted by police was frequently noted to feel intimidating or accusatory. All three groups of experts by experience observed that young people could feel unprepared for, and unnerved by, the change of tone in questioning adopted by police, once a formal ABE interview commenced:

*"They [police] just change [during a video recorded interview] – you kind of think – whoah! – whereas I kind of think if you're warned – it's a bit easier to deal with – whereas when you're not warned you think 'why are they being mean?'"* (young person C).

Conversely one of the experts by experience described how the professionals involved in her case had supported her by taking time to build rapport, facilitate her sense of control, and fully explain the approach which the interviewers would adopt:

*“I think a good thing was that in my case they did prepare me. Like they came and picked me and my mam up, and although my mam had to stay outside while I was being interviewed I knew that she was there. They told me I could have a break whenever I wanted one and they kind of gave me a pre-warning – that when he [the police interviewer] goes in there he will have no emotion, and he’ll be blank and just ask questions...He kind of warned me about that which was a good thing”* (young person H).

Young people’s sense of discomfort was also noted to be exacerbated by a number of procedural aspects of the interview. Members of each of the three expert by experience groups expressed awkwardness with being asked to complete a ‘truth or lie’ exercise at the outset of the interview. In two of these groups, specific examples were described in which they, as adolescents, had been asked to undertake an exercise specified in the guidance for ‘younger children’ (MoJ 2011: 185). This understandably was noted to contribute to them experiencing the process as patronising and alienating.

Similarly the use of two way mirrors within interview rooms was remarked on by several young people. Although such rooms are used partly to minimise the number of people present within an interview room, the lack of transparency about who was behind the mirror – and why – was described as unnerving, ‘fake’ and inhibiting:<sup>25</sup>

*“You don’t want to talk to them cos it’s not just that person that you’re talking to. There’s other people there, like the people that are recording you. They’ll be watching the video as you’re doing it, so you’re looking in the camera and thinking there’s people looking at me”* (young person B).

A number of young people also shared examples of technical difficulties that resulted in unnecessary ‘retelling’ of sensitive and upsetting information:

*“What happened in my interview, in the middle of it they said the tape wasn’t right, so they had to fix the tape and then do it again. So basically I had to start all over again and it got me really nervous. It doesn’t feel right. It’s not very professional”* (young person D).

Apart from the one example of proactive preparation and support cited above, a reference to being given a comfortable settee, the nine experts by experience failed to identify other steps taken by professionals to minimise their anxiety leading up to or during ABE interviews. There was little evidence from young people that current guidance was being fully followed in practice and interestingly many of their recommendations for improvements reflected provisions in place in current ABE guidance (MoJ 2011). For example they asked for professionals to:

- introduce themselves properly (see for example MoJ 2011: sec 2.25);
- explain what they were going to ask and how (Ibid: sec 2.26); and
- provide a choice of environment and timing for interviews and the gender of the interviewer (Ibid: sec 2.206).

Young people’s accounts also suggest that the existing guidance which allows for the presence of a ‘supporter’ in the room, in keeping with a young person’s wishes (MoJ 2011: sec 1.23) was not being utilised in many cases:

*“It just would have been – you know good to just have someone there – because there’s like two of them there and there’s only one of me at the other side of the room”* (young person I).

There was little evidence of young people experiencing the emphasis in ABE guidance on being offered choices and a flexible approach, rapport building, reducing witness anxiety (MoJ 2011: sec 3.8) or conveying respect and sympathy (Ibid: sec 2.230). And, in no cases did young people identify a time when interviews had been undertaken by anyone other than police (Ibid: sec 2.22). Similarly no mention was made in any cases of a RI being involved, despite the fact that current guidance recommends “[registered] intermediaries should be considered in all cases of child sexual abuse, not just those involving very young witnesses” to help the victim give their account and understand what is being asked of them (CPS 2013a: sec 85).

Messages from professionals reflect and expand upon these observations. Although noting some examples of good practice, professionals more frequently described interviews that were procedurally driven, poorly conducted and paid minimal attention to prioritising young people’s needs and wellbeing. Their evidence further

<sup>25</sup> A recommendation was made by the experts by experience that where two way mirrors were used, young people should always be shown these rooms and introduced to those present behind the mirror prior to commencement of the interview.



illustrated police failing to utilise the range of measures outlined in guidance to minimise young people's discomfort:

*“An ABE will be one of the most difficult things a young person has ever done, having to share so much detail. If you look at guidance, there is the possibility for someone they trust to be in the room that is never given... There's things that are in place that aren't offered”* (focus group 4).

The need to urgently improve the ABE interview process was recognised across the board within this research, including by police themselves (both operational and strategic). This is a message which is also clearly and repeatedly articulated across the existing body of literature (Robinson 2008a, 2008b; Bunting 2011; Hershkowitz 2011; Smith et al 2011; CJI 2012; HMCPSI/HMIC 2014). Key points made within this literature include the need for more effective interview planning and assessments of individual children's needs; accessing early investigative advice from CPS; the value of specialist officers and the need for effective supervision. Specific reference is also made to the need for additional guidance on “how best to conduct interviews with children in child sexual exploitation cases, which can be complex and involve a series of interviews over a period of time” (HMCPSI/HMIC 2014: 5).

### 2.2.2 Removal of possessions

Although absent from professionals' discussions, the removal of possessions as part of investigations was a matter of critical concern for the experts by experience. They talked about having to provide a range of personal items to the police for evidence, including personal mobile phones, laptops, items of clothing, photos and diaries. Data gathering workshops included lengthy discussion – and considerable discontent – about how these items were requested, obtained and retained by the police and the impact of this upon young people. Common themes within this included:

- the significance of these items to young people;
- a lack of professional appreciation and understanding of this;
- whether, and how, the requirement to remove possessions was explained;
- a lack of communication around if, when and how these items would be returned;
- a failure to return them in a timely manner;
- practical implications, specifically the

requirement to continue to pay a mobile phone contract whilst police had the phone; and

- feelings of disempowerment and punishment associated with personal possessions being removed.

Young people repeatedly described the police retaining their possessions for long periods of time, with several noting they had still not received these back despite the conclusion of an investigation or prosecution:

*“[I'd] just like them to know when they're going to actually need it – because really I didn't have my phone for like a year and really I'm sure it doesn't take a year to look at text messages”* (young person I).<sup>26</sup>

Several young people suggested that provision of clearer information about why certain items were removed and how they were relevant to an investigation would help them to accept these processes and avoid unnecessary anxiety and resentment. Mobile phones in particular were noted to play a central role in young people's friendships and support networks. Subsequently many young people described their removal exacerbating their sense of isolation and/or physical insecurity:

*“When they took my phone and that kind of took my safety away – because then...if anything was to happen between me going from home to school – I had no way of contacting anybody”* (young person H).

*“It like took away communication with my friends as well because I couldn't even text them to say like – could we meet up to talk or something – and then like my mum and dad work – so there not there during the day – so then like you're housebound or something”* (young person I).

While young people acknowledged that the collection of relevant evidence was necessary they still described a process which left them feeling punished and compounded existing feelings of loss:

*“I just felt like I had nothing really because obviously all that had happened and everything and then you were already on a low and then they were like taking your phone, taking your things”* (young person I).

Although some young people did describe receiving a replacement phone, approaches to this seemed to be inconsistent. It was clear that professionals didn't always understand the

<sup>26</sup> A related recurring finding from recently published HMIC inspection (2014c,18) reports on child protection work was that “officers reported that analysis of computers and other media submitted to the high-tech crime unit took too long to complete and inspectors found some cases with significant delays”.

significance of these items for young people, considering them solely in evidential terms while for young people they represented friendship, support and safety.

## 2.3 Ongoing communication about progress of investigations

The need for, and right of, victims of crime to receive timely communication about the progress of related police investigations is widely acknowledged within a range of UK policy and guidance, including the 2013 Victims' Code. Under this code, both children and victims of sexual violence are entitled to an 'enhanced service'. This means the police must discuss and agree with the victim how often they will receive updates on the case and entitles them to receive prompt communication about progress on their case through a named 'point of contact'.<sup>27</sup>

There was little evidence from either the experts by experience or professional participants that good practice regarding communication, as defined by the Victims' Code, was being followed. There was similarly scant evidence that police were utilising the role of RIs to facilitate communication or availing of the potential of young people's project workers to aid communication and mediate interaction. This mirrors the findings of a range of other studies, all of which identify the critical role of communication and the need for proactive management of this (Allnock and Miller 2013; MoJ 2013a; The Advocates Gateway 2013b; Cooper 2014).

Communication – or lack thereof – was identified by the experts by experience as a major issue throughout both investigative and prosecution processes. In relation to an investigation the particular issues they raised included:

- regularity and timeliness of communication about their case;
- accessibility of information that was shared with them; and
- the degree to which professionals explained not only what was happening but also why events took place.

These issues affected whether a young person experienced themselves as central or peripheral to the case. They also determined their understanding of the investigation, their preparedness for subsequent processes and their

overall sense of control.

The nature of investigations means that young people's initial periods of concentrated, and sometimes intrusive, contact with police were often abruptly followed by periods of little or no contact. Some of the experts by experience described struggling to manage the shift in pace and described a sense of *"being kept in the dark"* (young person B) and associated feelings of anxiety and stress.

Examples where police were proactive about keeping young people and families informed, either directly or via advocates, were highly valued:

*"I remember that there was one person who was good and like she was good at like keeping my mum informed and she just – she'd always like you know – ask and like – ask her what was going on – and she'd ring us – instead of like us ringing her"* (young person I).

Such examples were however presented as exceptions rather than the norm, and individually rather than procedurally driven. More often the experts by experience noted feeling that the onus was on them to repeatedly request updates on their case:

*"It's like we're the ones who have to make the effort to find out what's going on with our case...It's not that you can't [ask] you're just, you're never really informed. Like for me I think like as a young person and being like really young, going through something like this they should take it upon themselves to inform you"* (young person H).

The absence of information proved particularly distressing when it related to changes in restrictions on defendants. The same young woman explained how *"nobody phoned to tell me that they'd taken that [the defendant's curfew] away"* (young person H).

The nature of communication adopted by professionals was also significant. Several of the experts by experience noted how professionals' reliance on specialist jargon or terminology inhibited their understanding and worked to exclude them from discussions and decision making:

*"It's quick and easy for them to just [talk about] what's happening in their terms – whereas being young it can be quite difficult to understand what they're trying to tell you"* (young person C).

<sup>27</sup> They should be informed within one working day of significant changes to an investigation. Significant changes could include a suspect being arrested; interviewed under caution; released without charge; released on police bail; a decision made to prosecute, give a suspect a caution or out of court disposal; a police or CPS decision not to prosecute; details of the first court hearing; and if a suspect is released on police bail, the bail conditions and any changes (MoJ 2013a: sec 2.1-2.6).



Interestingly, professionals working outside of the criminal justice system reported similar challenges when trying to access accurate, up to date information about the progress of a case. Describing the system as confusing and difficult to navigate, they highlighted the need for specialist advocates who understood the system and could advise them on how best to support their young people within this. Four of the young people, who had access to support from a specialist ISVA, noted the benefits they gained from this in terms of communication and clarity of process:

*"[Having an ISVA] It's brilliant. There's only so many in the country though, ain't there? Without [my ISVA] - cos she's so up on everything that should happen, I think everyone should have an ISVA... they just make sure that everything's in place that should be and protect their rights and fight their battles with police. If you have any questions they normally find everything out for you... They let your voice be heard, if that makes sense"* (young person I).

Interestingly, however, two ISVA's who took part in the research described difficulties of their own in mediating their role with police and other professionals or accessing information and explanations for decisions taken. Concerns were also raised by other professionals about a potential lack of consistency and clarity around the role of an ISVA (which may be situated within a diverse range of services), and the need for further consistency and definition of their role.

## 2.4 Impact of investigative processes

The experts by experience spoke at length about the impact of involvement in investigative processes on their wellbeing. They highlighted multiple negative impacts including effects on their relationships with family and friends, education, physical safety, and their emotional wellbeing. They similarly highlighted a sense that many professionals they engaged with did not recognise the significance of needs emerging from young people's engagement with criminal proceedings. Consequently these needs were often not responded to.

A key set of impacts they discussed related to other people learning about their involvement in proceedings and the ways in which this impacted upon their sense of wellbeing, safety and control. The nature of the investigative process – often involving police visits to home or school, or time out of school – meant that it was sometimes difficult for young people to keep their

involvement in criminal proceedings private:

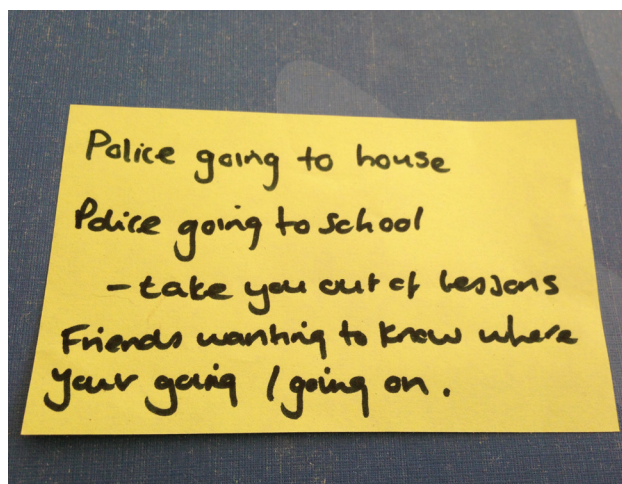
*"They [the police] come to your school and say 'we need to talk to this student' so then you have to get taken out of class and your friends are all like 'where are you going?' and you have to make something up, but if they keep on doing it all the time then your friends are going to know something is up 'cause you're taking days off - you know what I mean? Just to be at meetings and stuff like that"* (young person D).

Young people also highlighted dangers of peers or others in their community holding partial knowledge about their experience and the consequent risk of being stigmatised or blamed for their own abuse and victimisation:

*"Some people might only hear half the story and judge you and say that's disgusting, you're a slag basically. They've never been through it so they automatically judge something that they know nothing about"* (young person E).

Fear of, and risk from, suspects or their supporters were also identified as critical consequences of engagement in investigative processes. Young people across all three groups spoke about how their feelings of vulnerability increased as a result of the suspect knowing they had reported the abuse to the police and associated fears of retaliation. This was particularly acute where suspects weren't detained, although even where they were, young people still experienced pressure and fear of third party harm:

*"The whole time they've not been taken into custody you just worry, are they [the perpetrators] going to send someone, are they going to hurt me, 'cause they know where I live. You're scared to leave [the house]"* (young person A).



Young person C: *“You can get people giving you grief, telling you to not go ahead with it [the case] so you’re scared if you do, scared if you don’t.”*

Researcher: *“And is that the accused or people linked with them?”*

Young person C: *“Linked with the accused, and the accused, cos they’ve got friends who’ll tell you not to go on with it.”*

The experts by experience also talked about effects on schooling and family life, noting how involvement in criminal proceedings disrupted their ability to study or left them feeling unable to attend school, which in turn furthered their sense of isolation: *“I was just sat at home, missing school, just like watching TV. I felt physically sick”* (young person B).

Many talked about their parents’ or carers’ guilt around their perceived failure to protect their child from abuse and a belief that professionals they were encountering also held them responsible for this. They also shared their own feelings of guilt associated with seeing their parents deal with the additional stress of criminal proceedings which they felt they had exposed them to:

*“You feel really stupid, you feel like it’s your fault, this burden you’re putting on everyone, you feel like you’re stressing everyone out and you feel like it’s your fault...My mum had a lot of stress too. My mum still thinks it’s her fault. Like we had to get workers involved with my mum because she still thinks it’s her fault for letting him into the house”* (young person A).

In one case a young person described the intensity of this guilt driving them to *“feel that it would be better if you weren’t here”* (young person E).

Such feelings of low self-worth and self-blame were familiar to the experts by experience, as indeed were descriptions of depression and self-harming behaviours:

*“I think during the investigation you should get a lot more support...you can get really messed up and just feel that everyone’s against you. Loads of things can happen like self harm, eating disorders, you can go off the rails so you need support, especially at this point”* (young person A).

As alluded to in the above quotation, young people felt that insufficient recognition was paid to the impact of engagement in criminal proceedings on victims and young people’s lives:

*“The police are playing their game, at the end of the day that’s all they care about – their money. At the end of the day they don’t care about the effects on the child or the mental effects on that person. But that’s not their job anyway, their job is to arrest”* (young person C).

Although recognising that the primary role of police is an investigative one, both young people and professionals emphasised that a concurrent concern for victim wellbeing was both possible and necessary and that ultimately this could improve investigative outcomes.

# 3 Decision-making and Preparation for Court

For young people, the phase following their engagement in investigative processes – during which time police and CPS determine whether and what charges will be brought against alleged perpetrators – is one in which they have significantly lesser involvement, until if, and when, preparation for court is required.

Police initially decide whether to prepare and present a case to the CPS<sup>28</sup> based on their assessment of the available evidence. If they determine that there is insufficient evidence to bring a prosecution a 'no further action' (NFA) decision will be made. In cases where police do seek authorisation to charge, evidence is referred to the CPS to review against a 'Full Code Test' which asks (i) whether there is sufficient evidence for a realistic prospect of conviction (the evidential stage), and (ii) whether a prosecution is required in the public interest (the public interest stage). The potential outcomes at this stage are NFA, a caution or reprimand or prosecution.

As with the previous section the findings which follow relate primarily to young people's direct experience and subjective perceptions of these processes, supplemented with observations from a range of relevant professionals. They are divided into the following sections:

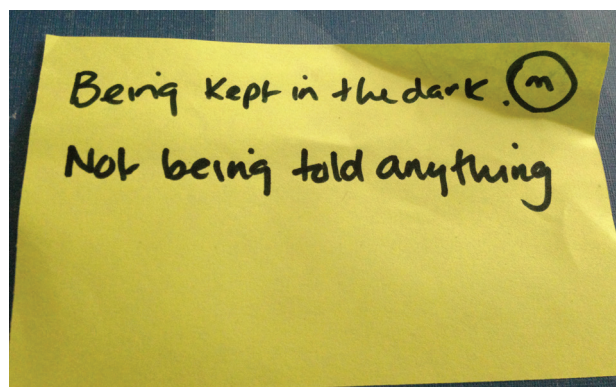
- police and CPS decision-making;
- preparation for court; and
- access to support and pre-trial therapy.

## 3.1 Police and CPS decision-making processes

The experts by experience – although not directly involved in (or sometimes even aware of) police and CPS decision-making about whether to charge – described this period of time as challenging; as a period of uncertainty and anxiety, engendering a sense of limbo. For a few, it also represented the final stage of their engagement with criminal proceedings, when NFA decisions were taken by police or CPS.

### 3.1.1 Communication and decision-making

For many of the experts by experience, the decision-making stage was characterised by a



lack of communication and knowledge about decisions being taken. Although many had experienced difficulties with the speed and intensity of early police involvement, the shift in pace once their involvement in the initial investigative phase was over, also presented difficulties for them:

*"It [the investigation] goes fast, then it stops completely or you don't hear anything" (young person F).*

*"You've got the CPS decision after the investigation... You don't know that it's happening. But then when you ring to find out they say 'Oh your file's with CPS' – that's the only time that you'd know" (young person I).*

*"The wait for decisions to be made was noted to be extremely stressful – in one young person's words 'affecting all the normality I had in my life'" (focus group 2).*

The experts by experience highlighted the need for professionals to recognise the specific support needs associated with this stage:

*"I was like the most emotional when I was waiting [for a decision]... I went through like a different series of emotions – like I was angry – then I was upset and then I'd have good days when I was like happy and I was like just able to wait and it didn't bother me – but they were very rare – I was just like angry and frustrated more than anything else – I just wanted to know – so I could be ready to prepare myself" (young person H).*

*"Half way through it you need a lot of support. This is the point where you don't*

<sup>28</sup> Given the nature of the crime, ideally contact between the police and CPS will have previously been established, in line with recent CPS guidance which encourages police to contact the local CPS Area Child Sexual Abuse Lead early on in an investigation.



*really have much to do with it. You just have to sit there. You don't know what's going on or what's going to happen"* (young person A).

Many young people explained that, once again, they felt an onus upon them to keep in touch with professionals. They highlighted the need for regular, proactive and formalised systems for updating them on the progress of their case and noted that even when no additional information about a case was available, regularity of contact was still important. With reference to significant developments in a case (e.g. setting a court date, a reduction to charges being brought, or a NFA decision) the experts by experience noted a desire to have the opportunity to meet with the relevant professionals to discuss this. The failure to offer young people such opportunities to question or understand difficult decisions resulted in anxiety, confusion and anger:

*"I remember as well – because it [CSE cases] usually goes to the crown court and they put mine in a Magistrates court and they never told me why and I still don't know. I don't know and then I just felt like – is my case just not that important or something?"* (young person I).

Similar emotions were associated with learning that there had been a reduction in the charges to be brought against an alleged perpetrator:

*"I'd a number of charges against the two lads but they only went with a few of them. Like there was loads. I was between 12 and 13 [years old] in the first one – it was over the space of a year that all this happened – and there was quite a number of accounts of things happened and they only picked two. They just picked the most likely to get a conviction"* (young person H)  
*... "It's like they say you lied. 'I believe these two, I just don't believe the rest of them'"* (young person I).

Professionals reinforced the need for meaningful dialogue with young people and their families and carers about these decisions. They highlighted the benefit of personal communication – *"so you understand the 'whys' rather than just telling them that this is it, period"* (focus group 3) – in contrast to the delivery of such critical messages by letter.

### 3.1.2 NFA decisions

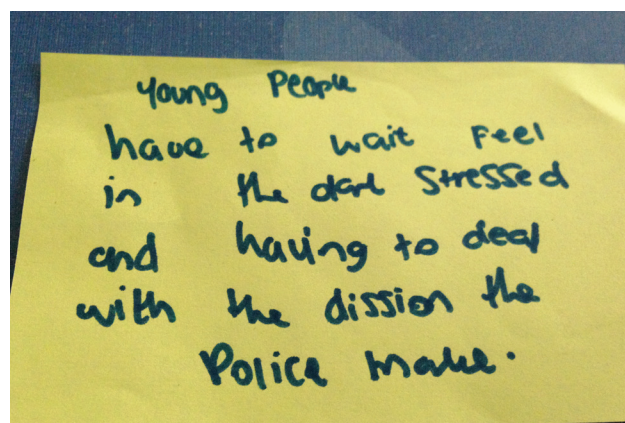
NFA decisions made by the police or CPS were described as particularly 'devastating' by the experts by experience, many of whom felt that professionals didn't fully appreciate the impact

and gravity of such decisions:

*"It can kind of come across as if they're just like – 'oh you know, there's not enough evidence – not enough facts there' – and then you question like well what was the point of me going through that? ... You go through all this and you've gone through like the devastation of having to relive what happened, through your interviews, for them to turn around say 'nah – we're not going to take it any further'. Devastating – it is devastating"* (young person H).

Professionals spoke at length about both the impact of NFA decisions on young people and the grounds on which such decisions were reached. It was noted that there remained too much focus on the perceived credibility of victims in reaching these decisions – something closely corroborated by recent inquiry and review literature (Jay 2014; GMP 2015). Professionals also noted how the outcomes of previous cases in which young people were involved could sometimes unfairly inform decisions about whether to prosecute.

Professional participants' contributions would



suggest that the steer in current guidance to consider inaccuracies in victims or witnesses accounts as potential evidence of vulnerability (CPS 2013a) has not yet been mainstreamed into practice:

*"The fact that they're ruled out as an effective or a good witness based on their chaotic or history of abuse, history of police interaction, whatever that is. There's a whole range of cases that don't even get to court based on a decision about a child who has been abused, but isn't recognised as abused, they recognise as a problem"* (focus group 2).

*"They look at the accounts that young people might have given and they might be seen as inaccurate accounts, but actually inaccurate accounts and retracting information and disclosures, should actually*

*be seen as a sign or a symptom ... that's what should be expected of victims of CSE because of the power and the control, and actually it's used against them rather than as part of the evidence for that young person as a victim"* (focus group 2).

When discussing the impact of repeated NFA decisions on young people, professionals described how this contributed to young people's self blame for their victimisation, reduced the likelihood of them reporting to the police in the future and further reduced their sense of self worth. As one professional describing a victim of a gang associated multiple perpetrator rape explained:

*"It was never that she was proved to have lied, but because she had a reputation of a case where the charges had been dropped CPS weren't even going to consider it, so they weren't going to waste time on it. So it becomes about the probability of success rather than what this young person has been through. ...and for her it's that she wasn't worth believing. And she doesn't believe in telling the police, there's no point, she's marked"* (focus group 4).

Opportunities to offset these negative outcomes were identified in cases where CPS representatives met with young people and their families to explain decisions not to prosecute, with strong support for the extension of this approach:

*"We're getting more and more meetings with CPS and senior prosecutors to discuss with the family why they have not gone further with the prosecution ...It just reinforced to the child most importantly that they were believed but ...So the child comes away feeling obviously not happy, because they wanted a better outcome, but they feel that they understand it now, they understand that the agencies and the power of the justice system has believed me"* (focus group 2).

## 3.2 Preparation for court

Unsurprisingly, the experts by experience recounted a range of ways in which the anticipation of a court case impacted on their sense of wellbeing including: loss of appetite; feelings of fear, confusion, anxiety, loneliness or depression; physical sickness and a desire to self harm or self-medicate:

*"It's like the closer [to the court case]*

*you get the more inward you go. You feel sick, you don't want to eat, your tummy's turning, everything, it's horrible"* (young person G).

*"That's what leads to self harm and stuff cos when you're on your own you don't know how to deal with it all so you start cutting and stuff. It's all very confusing"* (young person E).

In an attempt to minimise the impact of (the anticipation of) such proceedings on young people, the Victims' Code stipulates a series of standards for supporting victims spanning the provision of timely, accurate information about their case and preparation for court. Guidance (MOJ 2011; CPS 2013a, b; Judicial College 2013; MoJ 2013a, c; The Advocates Gateway 2013a) recommends that court preparation for all vulnerable victims and witnesses should involve:

- pre-trial 'familiarisation visits' to the court setting;
- involvement in decisions around Special Measures;
- opportunities to review their ABE interview or written statement<sup>29</sup> prior to providing evidence in court ('memory refreshing'); and
- avoidance of delays.

Several of the experts by experience had undertaken formal preparation for court, including pre-court visits, although their experiences of this varied significantly. The efficacy of pre-court visits in preparing young people was noted to vary considerably depending on the knowledge, skill and sensitivity of those leading these visits. Scenarios were also described in which pre-court familiarisation visits intensified young people's fears or only partially explained the forthcoming processes. Clearly there was a difficult balance for professionals to strike, between unduly raising levels of anxiety and ensuring young people had realistic expectations:

*"I didn't get talked to about the jury. I didn't know what a jury was back then. I didn't ask about a jury, but nobody told me. I didn't know what they were or what they would do, they must have assumed I knew but didn't check"* (young person A).

*"We took him to court to have a look and see what he would do on the actual day when he attends and he was really upset... He got the chance to stand in the witness box and he was absolutely terrified"* (focus group A).

<sup>29</sup> The exception to this is in circumstances where such evidence has been ruled inadmissible.

*“Being told over and over again to be prepared to get ripped into by the accused’s barristers. Being told over and over again that it will be difficult. And you can sit at home and worry and worry about it until you get sick. It might be better not to think about it, but you do need to know what to expect”* (young person A).

*“Recently we visited two young girls who were about to go to court. They asked us things like ‘what should we wear to court?’ ‘What is it like?’ They asked about the attitude of the Barristers, they wanted to know if it was like it is on TV where everyone shouts. We don’t sugar coat it. We tell it how it is so that the young people feel emotionally prepared”* (extract from peer supporters materials).<sup>30</sup>

On balance all sets of participants agreed that despite the risks, it was important to prepare young people for, and provide them with realistic expectations of, the court process. However it was also noted that ideally this work should be undertaken with the support of a known and trusted professional, recognising that meaningful preparation was an ongoing task, requiring more than a one-off court visit.

### 3.2.1 What to wear to court?

One concern noted by several of the experts by experience and peer supporters related to ‘appropriate’ physical appearance and dress within court. Young people described *“having to consider your appearance because you get judged on it”* and tensions between this and wanting to feel comfortable and *“like yourself”* (young person I). The experts by experience were given mixed messages about what was ‘appropriate’ attire with one recounting having been instructed not to dress in a way which was too ‘adult’ and another told they could not wear their school uniform as it made them look too young. Both sets of messages, though clearly contrasting in their content, were understood to be driven by concerns about how a jury might react to their appearance. Additional evidence provided by young people involved in a peer support programme for CSE victims dealing with the courts, notes that anxiety about appearance is a common preoccupation for young people and something professionals may not always recognise the significance of.

### 3.2.2 Memory refreshing

The experts by experience shared very little information about the issue of memory refreshing. There was however clear evidence from some that this had not taken place when they described viewing their ABE interview for the first time during court proceedings. This reflects findings from other research with young victims and witnesses which observes limited use of viewing ABE interviews prior to trial (Plotnikoff and Woolfson 2009).

Professional participants, who had experience of supporting young people to view their ABE interviews or read a transcript prior to court, emphasised the value of this memory refreshing.<sup>31</sup> They highlighted the positive contribution it made both to young people’s preparedness for court and their capacity to give best evidence:

*“The major thing that I felt worked really well was they had read their statements before, the night before...because they’d read their statements and then one of the barristers would say ‘I’m putting it to you that you weren’t there’ and two of the girls...they both said to this barrister, ‘it’s honest and true – I was there, you wasn’t there – and I know I put it on that piece of paper, so I am telling you I’m telling the truth’...I believe that was to do with the fact that the girls had been able to go through their statement beforehand and remember”* (focus group 4).

### 3.2.3 Timing and delays

Another significant concern about the period between a decision to charge and attendance at court was that of delays. The experts by experience described a sense that their lives were ‘on hold’ while waiting for cases to come to court and the subsequent impact of having to adjust to long awaited court dates being rescheduled, often multiple times or at the last minute:

*“You prepare yourself and then on the day it changes. You have to build yourself up don’t ya? It’s like ‘oh shit”*” (young person G).

*“It makes you feel a little bit less important as well – the fact that they’ve moved your case”* (young person H).

There was little evidence that current guidance about the need to avoid delays in cases with

<sup>30</sup> Extract from text of peer supporters speech, shared with researchers as part of the interview.

<sup>31</sup> CPS guidance on speaking to witnesses at court (currently out for consultation) clarifies the critical difference between memory refreshing (permissible) and coaching (not permissible) (CPS 2015).



young or vulnerable witnesses was being applied in the experts by experience's cases. A range of recently revised guidance now specifies that trial dates involving a young or vulnerable adult witness should only be changed in exceptional circumstances (Judicial College 2013) and that cases involving children or young people should be heard as soon as possible (CPS 2013b). In addition guidelines and literature acknowledge that vulnerable people are often more adversely affected by delay, both in terms of their recall and their emotional well-being (Quas and Sumaroka, 2011). Timetabling is therefore an issue that impacts upon best evidence and safeguarding.

### 3.3 Access to pre-trial therapy

The experts by experience's testimonies revealed a lack of access to therapeutic support in the pre-trial period; seen as necessary to address the emotional consequences of both their victimisation and the investigative process. Across all three groups there appeared to be variable levels of understanding about a young person's entitlement to therapeutic support but a dominant view that "you can't talk about the event or anything that's happened" (young person H) under any circumstances. Young people's lack of access to counselling or therapeutic support was noted to contribute to their sense of isolation, their difficulties managing emotions and the challenges of avoiding further abusive relationships:

*"You've to figure out for yourself instead, you've to counsel yourself instead cos they don't give you any help. You've to deal with it by yourself, which just shouldn't happen"* (young person F).

*"It gets me angry. Because if I had counselling through it, the first [court case], I wouldn't be in the mess that I am now...I picked the same character, just a different face. But if I'd unpicked it and found out what it was that attracted me to that kind of person in the first place I may not have had the rest of it"* (young person G).

As noted earlier, several young people experienced guilt about the impact on others

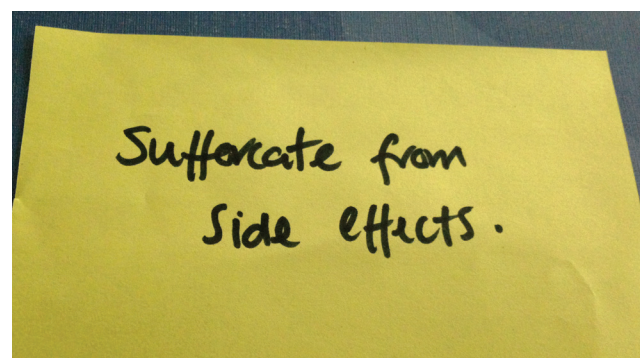
around them and described the additional pressures of worrying that their actions or behaviour could directly impact on the outcomes of their court case.

*"You can be really stressed throughout, getting ready for court. And your family's all stressed and starting to fall apart and you can start to feel like it's your fault, and when you start to feel that it's your fault you can feel like you want to leave home or self harm but then that can be used against you and you don't want to be seen as mentally unstable in the court cause then they can think that you're making it up or exaggerating it"* (young person A).

Throughout these discussions a recurring request was for help to normalise the feelings and emotions that young people experienced. As one young person explained:

*"I didn't know how to feel and I'd think 'should I feel like this?' – it's not until afterwards when you look back and I just think – there isn't any right or wrong way to feel when you're going through something like that"* (young person H).

The importance of pre-trial therapy was reiterated by several professional participants who also noted difficulties accessing this for the young people they were working with. A number of potential reasons were identified for this including: capacity/resourcing issues, confusion about what is, and isn't allowed and, associated to this, reluctance on the part of some providers to take on therapeutic support when there are legal proceedings pending.



# 4 The Court Process

Both the nature of the crime under consideration and the fundamental requirements of the justice system mean it is in many ways inevitable that involvement in a trial will prove to be a difficult and potentially distressing experience for victims and witnesses in CSE cases (Hall 2009; CPS 2013b; MacDonald 2013; Barnardo's 2014; CPS 2015). Strong associations with anxiety and distress certainly permeated the court-related contributions of both the experts by experience and professionals who participated in this study, with frequent references to the daunting, traumatic and disempowering nature of the court process for victims and witnesses.

This propensity for distress is explicitly recognised within a series of recent prosecutorial and judicial guidance documents, with an accompanying focus on the need to proactively utilise the range of safeguarding and support measures designed to minimise this:

“The prosecution process itself, especially the trial, can be daunting and stressful for children. There are risks of re-traumatising the child or causing the child unnecessary worry and distress” (CPS 2013b).<sup>32</sup>

“Individuals may have devastating experiences at court as a result of an accumulation of procedural failures and the way they are questioned. In safeguarding and other thematic reports on children, victims and vulnerable witnesses, the Inspectorates highlight the risk of secondary abuse from the criminal court process” (Judicial College 2013:48).

Prosecutorial and judicial guidance documents outline a range of measures that can be utilised in CSE cases to try and minimise the distress of victims and witnesses and facilitate better evidence-giving by the same. Informed by the principles of ‘expedition, sensitivity and fairness’ (CPS 2013b), these include:

- Proactive pre-trial and trial management;
- Memory refreshment;
- Physical separation from the suspect(s) in court waiting areas;

- Use of Special Measures;
- Engagement of RI's;
- Planned breaks;
- Witness supporters;
- Protection from cross-examination by the accused in person;
- Prevention of improper or inappropriate questioning;
- Restrictions on evidence and questions about a complainant's sexual behaviour; and
- Restrictions on reporting by media.

The experiences that the experts by experience and professionals shared as part of this study clearly indicate that although a number of these measures are being used to good effect in some cases, there remains significant scope for improvement.

One of the key factors identified as influencing variation of experience across the court process is that of a Judge/Magistrate's management of the court process. Whilst guidance clearly stipulates that they should take an active role in the management of cases, promoting flexibility, sensitivity and prioritisation in arrangements for children in court, the realisation of this commitment appeared to vary considerably in practice. Key elements that varied in relation to this include the degree to which Judges/Magistrates utilised their capacity to:

- Prioritise timetabling of children's cases;
- Schedule ground rules hearings;<sup>33</sup>
- Utilise the role of RI's and witness supporters;
- Think creatively about use of Special Measures, including use of combined measures and remote live-links;
- Pay cognisance to the views and wishes of witnesses;
- Prevent improper or inappropriate questioning by legal representatives;
- Restrict remit of cross-examination in multiple defendant cases;
- Give direction to the jury; and
- Exercise control over access to the court and reporting rules.

<sup>32</sup> [www.cps.gov.uk/legal/v\\_to\\_z/safeguarding\\_children\\_as\\_victims\\_and\\_witnesses](http://www.cps.gov.uk/legal/v_to_z/safeguarding_children_as_victims_and_witnesses); accessed February 2015.

<sup>33</sup> Ground rules hearings are pre-trial meetings of the trial Judge, trial advocates and RI (if involved) with the aim of deciding how a vulnerable witness, or someone with communication needs, should be enabled to give their best evidence. They set out judicial expectations and help set the tone for the conduct of the trial (The Advocate's Gateway 2013c). Although only mandatory if a RI is involved, these are noted to be good practice in all cases involving children.



The remainder of this chapter prioritises consideration of these elements from the perspective of the young people whose experiences were shaped by the degree to which these were proactively implemented. As such, it focuses on aspects of the court process experienced and discussed by the experts by experience – arriving and waiting at court; open courts; giving evidence and cross-examination; use of special measures, support and sentencing. As with previous chapters, their data is supplemented by the perspectives of professionals who participated in the study and considered with reference to how their experiences reflect effective implementation of the safeguarding and support measures currently available to Judges, prosecutors and other court officials.

## 4.1 Arrival and waiting at court

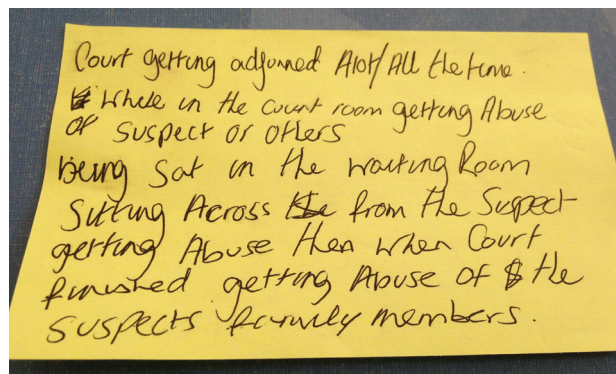
Unsurprisingly, all of the experts by experience talked about feeling worried and anxious about going to court. This was true both of the initial hearing and, where relevant, return visits for sentencing. They noted how these feelings could be significantly compounded where the physical set up and/or professionals' use of the court building fail to offer the privacy and experiential safety they require.

Specific issues identified as impacting upon this include the absence or existence of a private entry (and exit) point to the court building and separate waiting spaces away from the suspect(s) and their supporters:

*"[I didn't like] sitting in the waiting room across from the suspects"* (young person D).

*"I know with sentencing everybody's sat out in the waiting area. Like criminals, families of victims, they're all just sat in the same place...[The suspect] kept walking past me to go to the toilet and I had to have a police officer sat with me the whole time because of him walking past me. It shouldn't be like that. It should be separated... The second time [different court case] I did have a room to go into. My ISVA sorted that out for me; we had no idea that was available"* (young person G).

Despite the fact that the 2008 Witness Charter and 2013 Code of Practice for Victims of Crime



stipulate that young people are entitled to wait in a separate area from the suspect(s) and their supporters, and request use of a separate entrance, most of the experts by experience noted that they were not offered this. They additionally noted the frequent absence of safe routes to bathrooms and smoking spaces (that do not entail passing areas accessible to the suspect(s) and their supporters) even where separate waiting spaces were provided.

Such practical considerations are vital given the length of time young people can spend at court, waiting to be called, and ideally court preparation, supported by the Witness Service, should include comprehensive safety planning that considers use of the court space. These issues were also identified as intensifying young people's anxiety around the process in the absence of standby arrangements being utilised:<sup>34</sup>

*"There can be a lot of waiting. You can go to court not knowing when you're needed. Sitting there for hours and hours on end, just worrying and worrying"* (young person A).

*"You have to wait there and the pressure's building up inside of you, and they don't come for you"* (young person E).

The other key issue young people identified as critically impacting upon their experience of arriving and waiting around at court was that of sensitivity and confidentiality on the part of court staff and other professionals within the court arena. Two specific issues were identified in relation to this:

- The need for a sensitive and confidential reception by court staff – one of the groups of young people chose this issue as the topic for their 'forum theatre' exercise, acting out their negative experience of this and noting ways in which this could be improved. These included very simple measures such as court staff looking up and smiling when a young person

<sup>34</sup> The witness Charter 2008 provides for a vulnerable or intimidated witness to be allowed to wait on standby near the court, rather than in the court building. CPS Guidance on Safeguarding Children as Victims and Witnesses advises that "prosecutors should consider using a warning system by pager or text message so that a child can wait until shortly before needed to give evidence, either at home or somewhere away from the court where he or she is likely to feel more relaxed." It further notes that prosecutors should ensure that reasons for delays are effectively communicated with witnesses (CPS 2013b).

comes to the desk or not calling a young person's name across the room.

- Adequate provision and use of private spaces in which to have confidential conversations with their supporters or legal team, and not being witness to other young people's personal conversations. As one young person observed:

*"What really annoyed me is you're in a waiting room with all these different cases and the barrister will come for their case – people you don't even know – and they'll just talk about the case out loud and everyone in the room can hear it... There's no confidentiality or privacy"* (young person D).

Professionals strongly reiterated the importance of all of these issues for young people and noted considerable variation in their experiences of how young people's arrival and waiting times at court were facilitated. This was true both of court staff's personal interactions with victims and witnesses and the degree to which they proactively utilised available spaces to maximise feelings of privacy and safety. Whilst recognising that capacity to facilitate the latter is clearly impacted by the physicality of the court building, examples were given where spaces were available but only made accessible after a supporter specifically requested this. With regard to the former, both the experts by experience and professional participants highlighted clear room for improvement in terms of sensitivity to the need for privacy when dialoguing with victims and witnesses within the court building on the part of court staff, barristers and other professionals involved in the court process.

## 4.2 Open courts

Issues of privacy, safety and confidentiality were also raised as a serious point of concern by the experts by experience in relation to the open nature of the court process. They identified this as an issue in terms of the presence of three main groups – the perpetrator's supporters, the media and the general public, as illustrated by the following conversation between three of the experts by experience:

Young person D: *"You can have reporters in there [the court room] and they can publish it"*  
Young person A: *"There's a space where just anybody can come in and watch, a row for*

*people to just come in, like an audience"*  
Young person B: *"His mates were there, it was an open court"*

All three groups of experts by experience expressed serious discomfort with the open nature of the court. They talked about feeling intimidated by the presence of the perpetrator's supporters. They also expressed deep discomfort with the fact that strangers, with no connection to their case, could come in and hear intimate details of the abuse they had experienced and queried why greater control could not be exercised over these groups' access to the court:

*"The public come to court. They show the interview and you don't know who's been looking at it cos you're not there, you're not present. It should not be for anyone just to come in. Under 18s should not have an audience cos at the end of the day they're a child. They're still kids and this has happened to them and anyone can just walk in and hear it all – it's just stupid!"* (young person D).

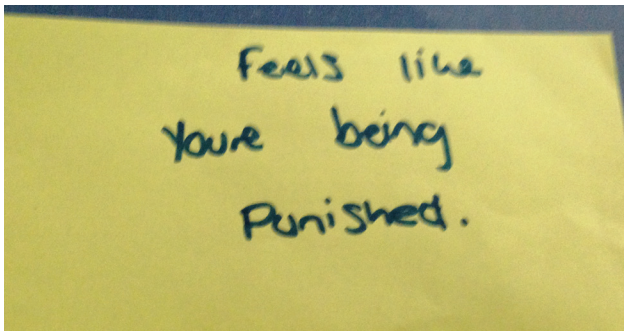
Whilst some young people were less questioning of why the media would be allowed to be present, they felt that this process should be better managed in terms of the degree of detail that could be reported. Concerningly, a few young people added that the public nature of the courtroom had not been explained to them in advance and, as such, they did not realise that the perpetrator's supporters and others would be there until they saw them upon entering the court.

The contributions of both the experts by experience and professional participants indicated little use of the powers afforded courts to exercise control over who may be present in the courtroom, despite the fact that such consideration is clearly permissible in cases such as these.<sup>35</sup> Strong support existed for more consistent active consideration of the appropriateness of such measures.

## 4.3 Giving evidence and cross-examination

Unsurprisingly, all of the experts by experience who took part in this study identified the process of giving evidence and being cross-examined to be incredibly difficult for them. Although concerns

<sup>35</sup> Although the principle of open justice normally requires that evidence is given in open court (i.e. in the presence of press and public who wish to attend), the court does have the power to exercise restrictions on this in certain circumstances. Section 25 of the YJACE Act 1999, for example, introduces a Special Measure in which the courtroom can be cleared of everyone apart from the accused, legal representatives and appointed witness supporters in sexual offences cases or those where concerns about intimidation of witnesses exist (S.25 YJACE Act 1999). Section 37 of the Children and Young Persons Act 1933 similarly grants the court powers to clear the public gallery when a person under 18 gives evidence in proceedings relating to conduct that is indecent or immoral (MoJ 2011). Police and CPS applications for Special Measures should consider the impact of open courts on young victims and witnesses.



were expressed in relation to the entirety of the process, a number of factors elicited a particularly strong response. These related to:

- The showing of ABE interviews in court;
- Lack of familiarity with their legal team;
- The combative nature of cross-examination;
- Use of video-link and other Special Measures; and
- Lack of appropriate support.

#### 4.3.1 The showing of ABE interviews in court

Despite the fact that guidance recommends young people should get to view their ABE interview ahead of the trial in more informal circumstances (MoJ 2011), few of the experts by experience identified having been offered this opportunity. Similarly, although there is no legal requirement for witnesses to view their ABE interview at the same time as the trial bench or jury, most of the experts by experience noted their experience to be exactly that – watching it for the first time as part of the trial process. Watching ABE interviews within the trial environment was noted to be a particularly difficult aspect of the court process, both in terms of coping with their reaction to the recording (and how this left them feeling when it came time to give evidence) and in terms of knowing others are simultaneously watching it:

*“It’s just like re-living it all again” (young person I).*

*“You get like reminded and you see yourself, see yourself in that position again. It just reminds you of everything you felt back then. And you feel like degraded, cos you don’t want people to hear about all that stuff. And you feel embarrassed. You don’t want to be reminded. You still think about it and know about it but you don’t want to be reminded in that much detail about it, cos it just brings it all back” (young person C).*

*“You’re sat in a room with someone that can’t talk to you, watching your video, cringing that everyone in the court is*

*hearing everything that you’re saying – and you don’t even know who is hearing it... The interviews are so long sometimes too. I think mine was two hours long and you just have to sit there and watch the whole time” (young person D).*

Professionals also raised serious concerns about inadequate consideration being given to the impact of watching ABE interviews during the trial, a practice that can easily be avoided. Whilst some examples of good practice were shared of young people being able to watch these in advance, as per recommended procedure, many other examples were shared that replicated young people’s experiences of having to deal with the associated triggers and trauma post commencement of the trial. A range of professionals noted the negative implications this held, both for young people’s welfare and, relatedly, for the quality of their subsequent evidence giving.

#### 4.3.2 Lack of familiarity with legal representatives

A further common theme that the experts by experience identified as negatively impacting on their experience – and specifically their understanding – of the court process was a lack of familiarity with their legal representative:

*“[What might make the court process better?] The barristers actually talking to you, like actually knowing who your barrister is and what they do. Like, you wanna know the person who has the whole trial in their hands and is taking you on and defending you, and he doesn’t even know who you are – it would be nice to actually talk to him. I didn’t even know his name...It should be easy to change. All they need is a bit of training. It’s not like we’re asking them to change a law or anything! Just go a bit slower, treat us a bit nicer” (young person D).*

Whilst all did retrospectively note that they had met their barrister at court, not all realised that was who they were meeting at the time. Two specifically shared how the inadequacy of this meeting meant they were unable to differentiate between the prosecution and defence barristers when being questioned by them in court:

*“I didn’t know it was her – I didn’t remember who she was – I don’t think she made it clear that she was like [the prosecutor]. I just remember her being there but...I didn’t have a clue which one was which in court. I didn’t know which one was my lawyer when they were questioning me. I didn’t know who she was. Isn’t it*



*supposed to be like your one's a bit nicer to you and that? I just didn't know which one was which...I tried to ask [my supporter] half way through. I was being questioned, and I didn't know – and I wanted to know like, is this my one or not, and so I turned to [my supporter] and I was trying to ask her and then the judge told us off" (young person I).*

The experts by experience's dissatisfaction with meeting their barristers related to:

- The timing of when this occurred – on the day of the trial when young people were already feeling anxious and overwhelmed;
- The location of the meeting – usually in public spaces;
- The nature of the interaction – often brief, unclear and un-participative; perceived to be a 'tick box exercise' led by the agenda of the prosecutor, as opposed to that of the vulnerable witness; and
- As highlighted above, the implications this held for their subsequent experiences of giving evidence.

Whilst delivering on the Code of Practice for Victims in terms of a legal representative introducing themselves to a victim or witness, young people's experiences rarely reflected the Prosecutors' Pledge to "promote and encourage two-way communication between the victim and prosecutor at court" (CPS 2005):<sup>36</sup>

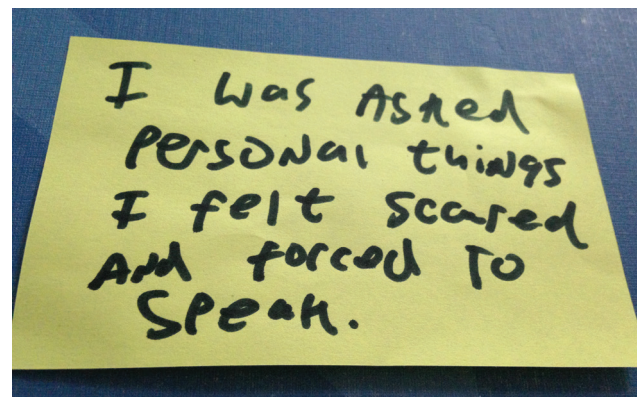
*"My young person met the barrister, who popped in five minutes before she went into court. I don't think that's good enough. She needed to be able to speak to him, feel that he was on her side, know that he knows all the information. He literally just popped in and said 'Hi, see you in there' and that was really difficult...And their attitudes, I think they're very condescending...even as an adult they make you feel stupid and irrelevant...and their whole attitude towards [young people] is very dismissive and really patronising" (focus group 4).*

Both the experts by experience and professional participants identified the importance of barristers more proactively and effectively engaging with victims and witnesses, with both sets of participants recommending that meetings take place at an earlier stage of the process so, as one young person noted, it isn't "all just being thrown at you on the day" (young person G). A number of professionals were able to identify examples in

which they had seen this happen – for example, where a barrister took a young person and their supporter for coffee and explained the details of the case and process in simple terms – and reflected on the benefits this brought not only in terms of a young person's welfare, but also their capacity to effectively give evidence. A couple of professionals also shared examples of defence barristers coming to introduce themselves to young people and explain their role, and noted the potential benefits of this if appropriately managed.

### 4.3.3 Cross-examination

The process of being cross-examined on evidence, unsurprisingly, attracted much commentary from both the experts by experience and professional participants, all of whom noted the process to be one of the most difficult parts of the court process for young victims and witnesses. This aligns with the findings of previous studies, many of which have commented on the traumatic nature of this process and the need for reform (Hall 2009; APPG on Victims and Witnesses of Crime 2014).



Young people held strongly negative associations with their experiences of cross-examination. All reflected feelings of fear, confusion, disempowerment and/or disrespect in their descriptions of the process, as illustrated in the following reflections shared across the different groups:

- "They freak you out and scare you"
- "Made me look like a naughty teenager"
- "Used stuff about me against me"
- "Made me feel like I had done wrong"
- "Make out you are a liar"
- "They pull you down"
- "They were patronising"

<sup>36</sup> CPS Safeguarding Guidance notes that prosecutors should answer any questions a victim may have, give an indication of how long they may have to wait and answer questions about court procedure and process (CPS 2013b)

- “I was frightened”
- “Degraded”
- “Embarrassed”
- “It makes me feel stupid and intimidated”
- “Ripped into”
- “Torn apart by the barristers”
- “You feel small. You’re going through all of that and then they’re also giving you abuse and you can feel like you’re being belittled, that nobody will believe you”

Some of the young people’s descriptions of the role of the prosecution barrister are also particularly telling in terms of how they experience the evidence-giving and cross-examination process. Several young people described the role of the prosecution barrister as there to defend them (as opposed to prosecuting the perpetrator), reflecting a perception that they are the ones on trial and in need of a defence.

Although all of the experts by experience recognised that giving evidence was a fundamental requirement of an investigative and court process, some did question why they had to go through the process again, when they had already given their evidence to the police, and did not feel that the reasons for this had been adequately explained to them. All – even those who understood the requirements of cross-examination – highlighted a clear desire for changes to practice in this regard. Particular concerns were raised about the information that is shared about them within the court setting, and the ways in which they are portrayed:

Young person I: *“They brought up the fact that she was in care and made her look like a naughty teenager in front of the court”*

Young person H: *“But I think that makes the jury kinda like, it just puts things in their head, doesn’t it? Like influencing their decision. It was all irrelevant information, [with] no relevance to the case.”*

*“In my second [court case], they used my first court case against me...saying that’s what I do. That I sleep with older lads and then get them done for it. It’s not that at all, but that’s what they do, they try everything...I was in trouble with the police quite a lot when I was 11 or 12 for drinking or stuff and they used that against me as well, and I was 14/15 by then”* (young person G).

The experts by experience also raised concern about the language used by barristers and feeling unable to challenge/question this:

*“You’ve got to answer whatever they say even if you don’t understand it because it is, like, it’s scary. I know they say if you don’t understand you need to say, but you don’t want to and if you don’t do that, how can you possible answer the question in the best way that you can”* (young person G).

Several commented on the apparent absence of anyone monitoring defence questioning, querying why Judges didn’t exert more control over proceedings:

*“I think that the judges have a lot more power than what they use – even when it comes to the barristers asking questions, the judge could say like ‘that wasn’t suitable to ask’ or say like ‘you could have asked that in a better way’ but I think they kind of just sit back and leave it up to you. Leave it up to you to kind of ask, instead of kind of pushing their way in because, for me, I would have thought that the judge would have had the power to do that”* (young person H).

Existing guidance clearly assigns this oversight rule to Judges, placing a requirement upon them to proactively manage barristers’ engagement with victims and witnesses:

*“Judges and magistrates have a paramount duty to control questioning,... Witnesses must be able to understand the questions and enabled to give answers they believe to be correct... The manner, tenor, tone, language and duration of questioning should be appropriate to the witness’s developmental age and communication abilities”* (Judicial College 2013:15).

Professionals emphasised the critical difference that proactive management of proceedings – or lack thereof – by a Judge can make to the experiences of victims and witnesses:

*“It makes a big difference when you have a judge who explains stuff to the young woman, takes their time, puts in different measures and also stops. The key is explaining a defence barrister’s question because they are purposely trying to confuse them when the Judge is trying to get to the truth. When they spell it out for her, it works so much better”* (focus group 3).

Although not discussed by young people, professional participants also raised the critical role of RIs in facilitating fair and effective questioning of young people. Active consideration of involvement of a RI is now recommended in

all child sexual abuse cases, ideally in advance of ABE interviews but even where this has not happened, Judges can request assessments to inform the court process.<sup>37</sup>

Unfortunately the fear, trauma and disempowerment that the experts by experience shared about the cross-examination process were not in any way unique to their cases. Professional participants, who between them had knowledge of a significant number of different cases across the country, strongly echoed young people's concerns, as does a wide body of existing literature (Hall 2009; Macdonald 2013; Barnardo's 2014; Cooper 2014; MoJ 2014b).

Professional participants noted how the difficulties of the process could be particularly acute for young people who were reluctant witnesses, having to give evidence against someone they believed themselves to be in a relationship with, for example. They additionally raised concerns about the length of time the cross-examination process could take (with one example given of a young woman on the stand for nine days) and the additional trauma experienced when a young person was cross-examined by multiple barristers.<sup>38</sup>

*"In recent cases, I've had eight barristers cross-examining one child, and QCs have been hired as part of that prosecution as well. So in effect, that child is being cross-examined by ten males – they were all male – and they were all very derogatory. The facial expressions, everything as they were speaking to that child was horrendous. It was horrible. I felt uncomfortable being there, as somebody supporting the family, let alone how she must have felt trying to give evidence in that situation and having her whole family history being brought up and used against her directly in the prosecution. It was horrendous"* (focus group 2).

Reflecting on how they had seen the process of cross-examination impact upon the young people they had supported, a number of professionals identified parallels between that process and the actual abuse itself; most notably in relation to replication of power imbalances and the traumatic impact of the process:

*"One thing that comes to mind for me is a young person saying that the court*

*process was worse than the exploitation itself. That was in relation to the aggressive cross-examination of the defence barristers around her character and her behaviour"* (focus group 2).

*"The imbalance of power within the court process is mirroring and reflecting the imbalance of power of the exploitative relationship, so it's just continuing that imbalance of power"* (focus group 2).

*"It's very traumatising and kind of counter-productive to recovery"* (focus group 1).

Quite a number noted that as a result of this, the young people they had supported through the process had clearly stated that they would not do so again and, in many cases, regretted having gone through the process on that occasion:

*"I don't think any of the cases that have been through the court, any of the young women afterwards have said 'I'm really glad I did that'. I think they've all been the same as your young woman – 'if I went back, I wouldn't do it'"* (focus group 4).

Another common observation by many of the professionals who worked outside of the legal system was the stark difference between what they saw as being permissible within the confines of evidence-giving in court and what would be deemed to be acceptable in any other context in which a professional might engage with a child:

*"The barrister's cross examination, it was just appalling. The fact that somebody could speak to another human being the way they spoke, is unacceptable...In our profession, we would be disciplined"* (focus group 3).

*"The first thing that comes to mind is that it's a system that legally treats children in a way that would not be accepted in any other system. It accepts behaviours, attitudes and processes that would not be accepted in any other system"* (focus group 2).

Such observations suggest limited understanding and application of safeguarding responsibilities and the paramountcy of children's best interests within the court setting, and highlight how trial experiences may actually undermine children's sense of safety, protection and wellbeing.

<sup>37</sup> Guidance currently stipulates that "assessment by an intermediary should be considered if the person seems unlikely to be able to recognise a problematic question or, even if able to do so, may be reluctant to say so to a questioner in a position of authority. Studies suggest that the majority of young witnesses, across all ages, fall into one or both categories" (Judicial College 2013: 12). In addition the complexity of CSE cases and the impact of trauma are both noted to impact on young people's communication capacities, further highlighting the need to actively consider RI's in these cases.

<sup>38</sup> The Advocates Gateway Ground Rules Hearing Toolkit, recommended as best practice, notes that in multi-defendant cases advocates should divide topics between them with the first defendant's advocate leading the questioning and advocates for the other defendants asking only ancillary questions relevant to their clients's case, without repeating questioning that has already taken place on behalf of other defendants (The Advocate's Gateway 2015).



## 4.4 Use of live-link and other Special Measures

Special Measures were introduced under the Youth Justice and Criminal Evidence Act 1999 to facilitate the gathering and giving of evidence by vulnerable and intimidated witnesses (MoJ 2011). They can take a number of different forms including:

- Screening a witness from the accused;
- Giving evidence by live-link;
- Giving evidence in private (in sexual offences cases and those involving intimidation);
- Removal of wigs and gowns;
- Use of video recorded interviews as evidence-in-chief;
- Communication through intermediaries; and
- The use of special communication aids.<sup>39</sup>

Guidance clearly stipulates that the Special Measures applied for should be determined on a case-by-case basis. Decisions should reflect the needs of the victim and the nature of the offence and pay cognisance to the views of the victim and, where appropriate, their parents/carers (CPS 2013a). An application for Special Measures does not necessarily mean that these will be granted. The Court will decide on this based on the application of three tests which relate to the vulnerability of the witness (all under 18's will fulfil this), whether the application of Special Measures is likely to improve the quality of their evidence and, if so, which are most likely to do this (MoJ 2011).<sup>40</sup>

Most the experts by experience reported that some form of Special Measures was used within their case, most frequently use of a live-link and the removal of wigs and gowns. Not all, however, spoke positively about their experiences of this. Although one young person positively reflected on how they had actively been involved in decision-making around the use of Special Measures in their case – including being informed that they could change their mind about this at the last minute as per recommended practice – reflections from the majority clearly indicated that their experience of the application of Special Measures was more disempowering than empowering.

Many of the experts by experience did not realise that there were a range of Special Measures available for use, having only been told about the one(s) that the professionals felt were most appropriate in their case. Nor did they realise

that they (and/or their parents/carers) should have an opportunity to input into decisions about which Special Measures would most effectively facilitate their evidence giving, with virtually all noting that decisions about Special Measures were made 'for them' rather than 'with them'. This is in clear conflict with current policy direction about victim involvement in decision-making around use of Special Measures. As the Equal Treatment Bench Book notes: "emphasis is now given to the witness's viewpoint because witnesses are likely to give better evidence when they choose how it is given" (Judicial College 2013:53).

For the majority of the experts by experience, the Special Measure they were advised of and 'encouraged' to use was that of live-link. This is in line with the stated presumption that this will be the preferred measure where the witness is a child (MoJ 2011). What was not explained to most was the fact that they could express a preference to give evidence in court, with use of a screen (MOJ 2011; Judicial College 2013), something a number of them would have preferred to opt for had they fully understood the implications of both options:

*"I didn't want to be in the video link but they just sort of said like 'you're going to be in the video link room' and there was no choice really" (young person D).*

*"Nobody says – well this [video link] is an option or on the other hand you can stand in court" (young person I).*

In addition to the disempowerment inherent in their exclusion from the decision-making processes around Special Measures, many experts by experience reflected on the negative implications that enforced Special Measures had on their experience of the court process. This was particularly true of those who had been advised or instructed to appear via live-link. There was no evidence that any had exercised their right to try out the live-link equipment during a pre-trial visit, and subsequently most did not realise in advance of the trial that this did not offer visual anonymity from the court:

*"I didn't like the fact in the trial that – like he was there and he could see me – it was a long time ago from when he had seen me and obviously my appearance had changed and I'd done that to feel more safe because it was like – well he still does live in the same area – so I did that and he was there*

<sup>39</sup> The YJACE also allows for video-recorded cross-examination or re-examination. Although a section 28 pilot commenced in 2014, this is not yet routinely available.

<sup>40</sup> In a Crown Court, these decisions should be made at the Plea and Case Management Hearing alongside other matters such as the need for breaks, third party material and reporting restrictions. In a Magistrate's Court they will be addressed in the pre-trial review hearing or a special hearing convened for that purpose (MoJ 2011).

*in court and looking at me and he knew exactly what I looked like – and like I didn't like the fact that everyone could see me and I couldn't see them. If I'm being shown on the screen, well I might as well just be there” (young person I).*

The experts by experience were very vocal about the inequity associated with their experience of live-link; in which they could be seen by everyone in the court room, but they could only see legal representatives and were therefore unaware of who was watching them:

Young person D: *“When you're in the video room you don't get to see in there [the court room]. You just get to see the barrister and the judge. You don't get to see anyone else who is there and I would have liked to see who else was there, to see if there was people watching.”*

Researcher: *“and who gets to see you?”*

Young person D: *“Everyone gets to see you. Everyone gets to see you but you only see the people who are talking to you.”*

Young person E: *“There'll be so many people watching it and you don't know. Cos you know some people come just for the fun of it, cos there's something hot going around town, and they can see your face and everything but you don't know who they are, who knows about your story.”*

Young person D: *“And you can't see them. We should be able to see them. It should be like you are in a stand, you should be able to see everything you could if you were on a stand but just be in a different room. There could be two cameras – one with whoever's talking, and the other just an overview of the whole court room.”*

Again, this is in conflict with accepted wisdom on this matter. CPS Guidance on Safeguarding Children as Victims and Witnesses, for example, clearly stipulates the need for children to be made aware that the defendant and others in the court room will be able to see them (CPS 2013b). It further stipulates that if this will cause the child distress (noting that for many, fear of being seen by the defendant is worse than that of seeing the defendant) steps should be taken to address this such as covering the defendant's monitor or allowing the child to give evidence from behind a screen in court. The Equal Treatment Bench Book recommends consideration of combined Special Measures in such situations, using screens to shield the live-link screen from the defendant and public (Judicial College 2013).

Interestingly, the one Special Measure that young people most often noted being offered choice around was that which they felt was of least consequence to them, the removal of wigs and gowns. This was highlighted as yet another example of how they felt professionals failed to understand the differences between working with adolescents and younger children and the consequent patronising and alienating impact this can have:

*“The barrister said ‘do you want me to take my wig off?’ and I was like ‘No, it's not really going to bother me’, but he said some young children find it funny and distracting and I felt dead patronised by it. I was like ‘I'm not a young child’. I am a child but I'm not, at the same time...If they are giving you the option to not wear it, why not just get rid of it. It's obviously not that important that they wear it. Why not just wear a suit in the beginning” (young person D).*

It is also interesting, although in many ways unsurprising, to note that there was no one Special Measure that the experts by experience consistently expressed a preference for. Some of those who were told they had to use the video-link would have preferred to be in court behind a screen, and vice-versa. What there was clear consensus around across all three groups however was the need to:

- offer young people choice;
- explain the practicalities and pros and cons of each option;
- take on board their preferences in line with their age and capacity; and
- where there are valid reasons for not doing so, clearly explain the rationale for this.

These principles of operation were strongly supported by professional participants who also shared many examples of Special Measures decisions being made for, rather than with, young people. They similarly emphasised the importance of consultation and choice in the process:

*“It's about choice and empowerment...It's telling them what's available, not making decisions for them” (interview 1).*

*“You need some flexibility for [adolescents]. Explain these are the reasons we do these; its up to you whether you want them or not. It's assessing that young person's wishes and needs and making the best decision with them...Even if you had to make a decision that went against what a*



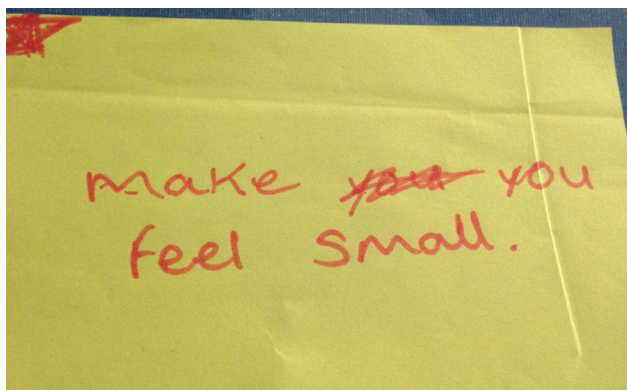
*young person wanted, the process of that is important. We do risk assessments all the time. We talk with the young person why things are certain ways. It's just being honest and working with them so if in the end the decision has to be against what the young person wants, there's a reason that you can explain and justify. It's not rocket science" (focus group 4).*

A further important point made by professionals relates to considering the nature and medium of the offence when assessing the appropriateness of different Special Measures. A frequently cited example of this related to the use of live-link in the case of online abuse:

*"If a young person has been exploited online, images distributed or they may have been asked to perform sexual acts or been filmed, then being cross-examined or giving evidence via video link, might not necessarily be the most appropriate form of Special Measure...its having the different options and actually discussing with the young person and considering their case – what actually would be the best option" (focus group 2).*

## 4.5 Support for victims and witnesses

The court process is an inherently stressful and traumatic experience for young people, as consistently illustrated throughout the experiences and perspectives reflected above. The provision of appropriate support is therefore absolutely critical both in terms of the welfare of the child and their capacity to effectively contribute to the trial process. As the Equal Treatment Bench Book notes "potential benefits to witness recall and stress reduction flow from the presence of a known and trusted supporter who can promote emotional support" (Judicial College 2013:54).



All of the experts by experience commented on the critical importance of support from a 'known and trusted' individual during the court process, for both victims and witnesses:

*"Everyone who goes to court needs support cos court is a big experience that they should never have to do" (young person H).*

*"Witnesses are still facing the same as victims. They're still standing up and saying the same thing. If a girl's been raped while her friend was there she'll have to explain the whole thing, she's still seen it" (young person G).*

Unfortunately only a minority of the experts by experience felt that the court process adequately facilitated their needs in relation to this. A couple explicitly commented on how they had wanted an ISVA or other supporter in the live-link room with them, so they weren't just there with the court official, but were not granted this request. Professionals reported similar difficulties around accessing appropriate support for young people. They did, however, also share examples of where 'known and trusted' professionals were allowed to be present with a young person throughout the court process, noting the critical difference the mere physical presence of this person made.

Although it is ultimately the decision of the Court to specify who may accompany a witness in the court or live-link room, guidance recognises the need to provide for support in addition to that offered by court personnel; "ushers cannot offer emotional support to the witness and receive 'negligible' appropriate training" (Judicial College 2013:55). Guidance allows that the role of witness support can be fulfilled by anyone who is not a party to the case and has no detailed knowledge of evidence.<sup>41</sup> It also stipulates that witnesses' wishes must be taken into account when determining who will fulfil this role, a practice that both the experts by experience and professional participants encouraged significantly greater use of.

## 4.6 Outcomes: verdicts and sentencing

The issue of verdicts and sentencing elicited strongly emotive reactions from the experts by experience both in terms of the nature of the verdicts and sentencing, and the ways in which they heard about these. Recognising this, CPS guidance places a clear obligation on prosecutors to ensure that children are told about – and

<sup>41</sup> This means for example that if an ISVA has previously viewed the statement or ABE, as part of memory refreshing, they may be prevented from supporting a young person in the live-link room.

understand – the outcome of their case, with specific reference to particular need for this when a case is dropped at court or lesser pleas are accepted (CPS 2013b).

The experts by experience who participated in a trial that failed to result in a conviction were inevitably disappointed with this outcome. The presence of a conviction did not, however, necessarily result in a greater degree of satisfaction. This was particularly so in cases where suspects were only prosecuted for some of the offences or lesser offences than the young person had given evidence of. It was similarly the case where deals had been agreed as part of the trial process to secure a conviction in relation to less or more minor offences, particularly where young people were excluded from the decision-making process around this and/or explanations of the same:

Young person D: *“It gets you so angry. Like with me, he was tried for two grooming and five other things and he said ‘oh, I’ll say I did one of the grooming and the other five things’ but if he’d got the [other] grooming, he probably would have got double [the sentence] but because he only admitted to one he didn’t get as long.”*

Young person A: *“Yeah, mine did that too but I wasn’t told. He admitted to minor stuff but not the major... [After a few days] my barrister came and said ‘oh he’s admitted to it’... He was meant to say he’d admitted to the minor stuff and give me the choice as to whether I wanted to carry on, but he just said he’d admitted it and we all laughed and hugged and I never saw him again. The full time I was with him was literally three minutes in total. I didn’t know who he is. Can’t remember anything about him, apart from he lied to me... If somebody’s bargaining a sentence, the young person should be told – and not three years later by the counsellor worker.”*

Young person D: *“They probably think the young person’s probably really stressed. If we go for this, it’ll give them a break but I’d rather have carried on and got a longer sentence.”*

Young person A: *“You feel betrayed. You feel angry and betrayed. Like why would someone not tell you [that] you might have had a choice to make, to prove that he’d actually done the major stuff as well as the minor stuff?... I think they did have my best interests at heart. Like maybe they didn’t want me to go through anymore suffering but at the end of the day it was my decision so I should have been told.”*

Young people also expressed dissatisfaction with the severity of sentences given post conviction, comparing sentencing of sexual offences unfavourably to the perception of comparative tariffs for other crimes:

*“I think the sentences, the maximum and minimum, should be made higher because I was watching Crimewatch and someone burgled a house and got five years, and with what happened to me he got four and a half and I was like someone took a laptop and they got longer than ruining my life basically! How does that even work? Like, yeah, they took a laptop but that can be replaced. I can’t replace all the things that have happened to me. It just doesn’t make sense... that proper got me. I was so mad when I heard it!”* (young person E).

Only two young person attended court for sentencing. One chose to do so, attending part of the process so she could do her impact statement:

*“You can talk about the impact the whole court case has had on you, the extra added stress and then what’s happened to you, the impact that that’s had on you... I think it’s a good idea, I do. It adds quite a bit onto the sentence”* (young person G).

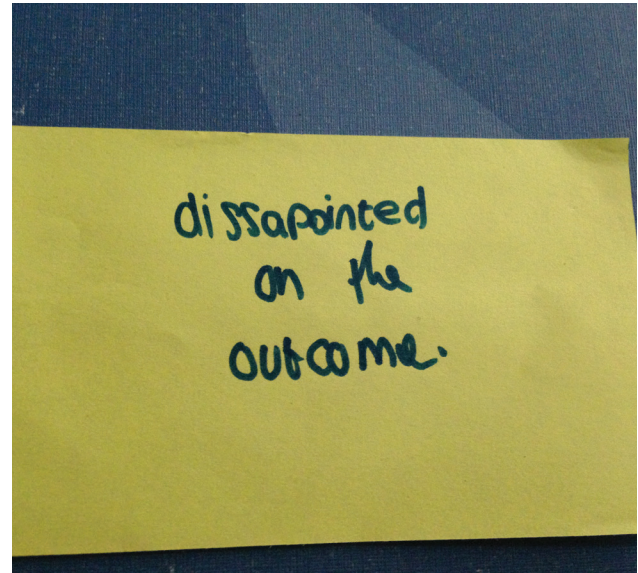
The other attended under duress, noting that the CPS *“made me go to the sentencing cos the judge would feel guilty giving him a lenient sentence. It’s like guilt tripping and all sorts. It’s horrible”* (young person F).

It was unclear from their conversations how these two young people heard about the sentencing outcomes of their cases and whether the fact that they had attended court for part of the process influenced this. It was however clear that communication about sentencing decisions was a critical issue for the other young people who didn’t attend sentencing. These young people heard about sentencing decisions indirectly and/or at a later point in time with all reflecting that their experiences of this were far from satisfactory and not in line with recommended procedures. For one young person, this was because they first heard about the outcome of the case on the news. For the remainder it was because they heard by letter or telephone call to their parents, noting that the matter of fact way in which this was handled felt incongruous with the importance and emotionally charged nature of the information being shared.

Reflecting on this, a number of the experts by experience expressed a clear preference for being told in person: *“it’s not really a heartfelt way to*

hear. Like if it didn't go well you don't want to look at a letter. You want someone to come to your house and say 'I'm sorry, it's not gone your way'. You want to actually be told in person" (young person F). Whilst others were less sure about the means through which they would wish to hear, common to all was the wish to be consulted about these decisions and informed about outcomes in a timely and sensitive manner.

The combination of the traumatic impact of participation in the court process, combined with disappointment around outcomes, led many of the experts by experience to question the benefits of engagement in the process. It similarly led many professionals, who identified much of the same dissatisfaction with the processes outlined above, to ask the same type of questions: Is involvement in a court process necessarily the best thing for a child? Does it deliver justice and, if so, whose definition of justice?

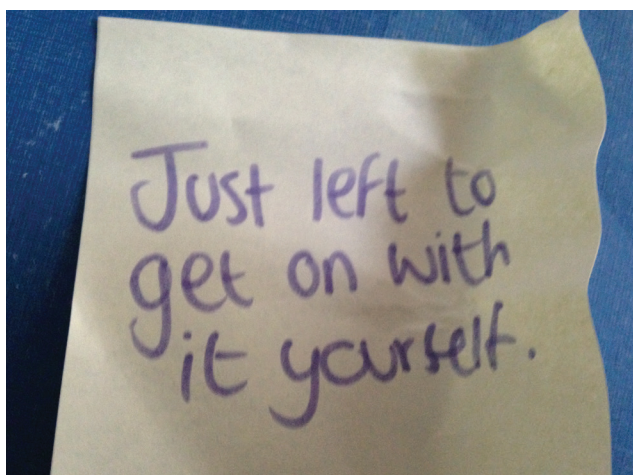




## 5 Post-outcome Needs and Responses

The emotional impact of learning about the outcomes of cases, as outlined in the previous chapter, is rarely short lived. As such, victims and witnesses require access to support that extends beyond sentencing decisions. Although the Victims' Code outlines a post-trial entitlement to "be put in touch with victims' services by the Witness Care Unit where available and appropriate" (MoJ 2013:23), there is little clarity about what this should entail or how it should be delivered.

The one exception, of relevance to many victims in CSE cases, is access to the Victim Contact Scheme (VCS). This applies to victims of sexual offences where the offender gets a sentence of 12 months or more. The remit of this scheme is however clearly focused on the outworking of the offender's sentence, as opposed to the provision of emotional or therapeutic support for the victim. If a young person chooses to take part in the VCS they are given a Victim Liaison Officer whose role it is to "keep [them] informed about important stages in the offender's sentence [and] make sure that the victim's views and worries are shared with the prison or Parole Board when they are discussing whether to release the offender" (MoJ 2013:49).



Whilst access to information about offenders' sentencing was recognised to be a vital aspect of post-court needs, it was only one aspect of a complex set of support needs identified by the experts by experience, many of which they felt currently went unrecognised by statutory services. The experts by experience described a clear disjuncture between how professionals and victims construed the post

court experience. Whilst they observed criminal justice professionals viewing verdicts and sentencing as the end of the process (by virtue of an end to their involvement), they highlighted the absence of any such ending for young people. They identified the post-sentencing period as a particularly challenging and traumatic one, during which time others moved on whilst they were left processing the impact of their experiences.

The majority of the experts by experience whose cases reached court noted that things got worse for them after court cases ended, even in cases where prosecutions were deemed to have been 'successful'. There were a number of potential reasons for this including the absence of a case to focus on and the scaling back or removal of support structures:

*"For me, after the sentencing was the worst time. I don't know why, but during the investigation you always have something on your mind to distract you...Once it all ends you only have that to think about and it overwhelms you and everyone's trying to get on with their life and you're still stuck in that moment" (young person D).*

*"Cos you have that time when you think it's ok 'cause you feel the relief, and then you start to dip. They think they've done their job 'cause they're in prison or whatever, but it's not over" (young person F).*

Dissatisfaction with the outcomes of the cases was also a contributing factor to the difficulties of the post court period. As noted previously, systemic justice did not always equate with young people's interpretation of the same. Additional difficulties were associated with anxiety about potential retribution from the perpetrator or their associates, and concern about what might happen on their release:

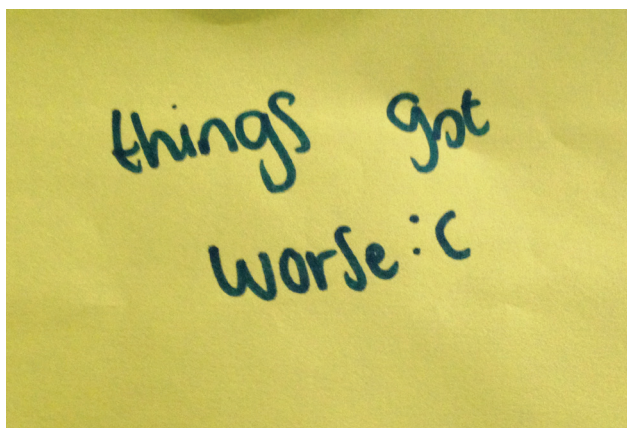
*"From past experience they could send someone out from prison if they're getting released and they live close, they could send them out to find you. You're constantly trying to watch your back and you don't have any support from the police or anything... You don't know what's going to happen when they do get out. You think 'will they [the police] remember or will they just forget and not inform me and stuff?' You*



*don't know what's going to happen 'cause you've lost contact with people"* (young person D).

Dealing with the public profile of their abuse was also a key consideration for a number of young people. Even where names were not used, in line with reporting restrictions, a number of young people described media accounts in which they felt they were clearly recognisable. Some also noted how the potentially permanent nature of online material limited their ability to move on:

*"Online articles and stuff were written about me and what happened, and the way they were wrote, I wasn't told about any of them, but the way they were wrote anyone I knew who went to my school or lived in the town, knew it was me and it was all spread around school...I was being sent links and stuff to these articles about me and what happened...it just makes me feel sick that it's on the internet and it's there forever"* (young person A).



The difficulties of the post court period, and the exacerbating effects of an absence of appropriate support, were also raised by many of the professionals who participated in the research:

*"The trial finishes, that's it, police are off. Then the victim is left to be supported by whoever is left and pick the pieces up. There isn't that after care... They are really vulnerable then because they've been victimised because of a vulnerability, they've been through a court process which is then made them vulnerable again and probably re-traumatised them because they've had to go through their experiences in open court. Then it's like, you're on your own. If there is another perpetrator out there or group of perpetrators, it's ideal time, straight after when they're isolated, there is no one there to wrap anything around them, really dangerous time, I think"* (focus group 1).

*"It's like a void for some young people, and it's like 'what do I do now'? I don't know what to do, almost sort of like, everyone keeps saying 'oh you know, back to normality', well what does that mean? Yes I can do this now, I've got the opportunity to do that, but actually I still don't feel ready and actually I don't know why. Why can't I then do this? Why do I feel I can't, why do I feel stuck?"* (interview 1).

*"'Everybody drops me' – after the trial there's nobody there for me – that's what I hear from young people...there needs to be an on-going commitment from agencies about supporting post-trial because I think you build up to this crescendo of the trial and then as soon as it's done, everything falls away and you're kind of left holding young people'"* (focus group 4).

Professionals noted the vital role that the voluntary sector has to play in meeting this ongoing need for support, but simultaneously noted budgetary constraints on this. They also highlighted the ongoing impact on young people's families and the need to provide a holistic supportive network in relation to this. They similarly noted the particular challenges arising when a victim or witness has turned 18 post involvement in a case and the well documented difficulties in accessing appropriate support services in such instances.

Whilst recognising that the exact nature of young people's needs will vary by individual, all participants were clear about the urgent need for ongoing access to open-ended post-court support that young people could avail of as and when required. All similarly noted that this should ideally be provided by services or individuals with whom young people were already engaged:

*"I think it's really important to have one person with you the whole way through that you're close to. For as long as you need. Some people don't want help after, some do"* (young person B).

# 6 Cross-journey Thematic Findings

Having mapped young people's journey through the different stages of the criminal justice system – and the challenges and associated opportunities for change – this chapter offers brief commentary on six key thematic issues underpinning their experiences throughout.

## 6.1 Professional attitudes

*“She tried to blame my upbringing for the people that I was associating with...she kind of like blamed me for what had happened” (young person H).*

Safeguarding young victims and witnesses in CSE cases requires a response from professionals, regardless of role, that demonstrates compassion and empathy. Evidence from *Making Justice Work* suggests that, although occasionally experienced, this has been absent from many young people's encounters with criminal justice professionals in CSE cases.

This failure to embed humanity within the system has resulted in unnecessary distress, disengagement and re-victimisation. It appears that such dynamics are exacerbated in contexts where:

- there is a failure to recognise the interdependence of victim welfare and investigative needs; and/or
- the impact of abuse on young people and their subsequent behaviour and responses is poorly understood.

Contrary to expectation, the findings of this research demonstrate that the most vulnerable victims are often those least likely to receive appropriate and sensitive responses. This appears to be linked to an ongoing tendency to interpret and frame presenting behaviours as indicative of unreliability and/or culpability, rather than considering these as indicators of vulnerability and responses to trauma, abuse and victimisation.

## 6.2 Communication

*“I didn't get talked to about the jury. I didn't know what a jury was back then. I didn't ask about a jury, but nobody told me. I didn't know what they were or what they would do” (young person A).*

The experts by experience's descriptions of encounters with criminal justice professionals repeatedly highlight the significance and necessity of appropriate, effective communication. Unfortunately they also convey repeated failures to meet these needs. Specifically they illustrate:

- the absence of regular, timely communication, and the subsequent onus placed on young people or their supporters to proactively seek information;
- a lack of clarity within information shared with young people: through the use of jargon, the provision of misinformation or contradictory messages;
- changing and inconsistent points of contact; and
- a failure to properly manage young people's expectations and allow them to fully prepare for forthcoming processes or outcomes.

There is also evidence that professionals often overlook the need to explain why things take place (as well as what and when) and the need to provide opportunities for young people to ask questions. Examples where professionals took time to help young people understand the rationale behind difficult processes, decision-making or professional approaches were highly valued by young people and their supporters. These examples were noted to reduce the potential for further trauma or distress, but were unfortunately observed to be exceptional practice rather than the norm.

## 6.3 Power and control for victims and witnesses

*“I was basically a puppet. When they [the police] wanted me, I had to do it. When they didn't want me, I heard nothing” (young person G).*

Young people who have been involved as victims or witnesses in CSE cases and the professionals supporting them repeatedly describe the process as disempowering. A number of professionals drew explicit parallels between the dynamics intrinsic to abusive relationships and those which characterised young people's engagement in aspects of justice proceedings. Similarly, scenarios were regularly presented in which decisions, often with young people's best

interests at heart, were made for young people rather than with them.

Countering the loss of control young people currently describe as characterising these processes is a vital aspect of upholding children's rights and best interests. The experts by experience who took part in *Making Justice Work* asked that wherever possible and appropriate they are informed and consulted about choices available to them in accordance with their individual capacity. This also means avoiding approaches to 'child-centred justice' which view children as a homogenous group and are often experienced as patronising by adolescents.

## 6.4 Wellbeing and support needs

*"You feel really stupid. You feel like it's your fault, this burden you're putting on everyone, you feeling like you're stressing everyone out and you feel like it's your fault"* (young person D).

Engagement with the criminal justice process as a victim or witness in a CSE case presents a new set of risks to a young person and creates associated support needs. The experts by experience described significant negative impacts to their wellbeing. These included impacts on their family and peer relationships, their self-image and confidence, their sense of physical safety, their access to education or employment opportunities and their mental wellbeing.

To a degree, young people and professionals understood some of these as unavoidable consequences of the decision to engage with investigations and prosecutions. However the research identified opportunities to reduce their impact by planning for and responding to these needs. Characteristics of effective responses were identified as:

- being long term and consistent – primarily provided by a single trusted individual, continuing throughout investigative and prosecution process and crucially continuing post court or NFA;
- advocating on young people's behalf, ensuring young people's rights and best interests were upheld and helping them to make sense of complex processes;
- recognising the needs of witnesses as well as victims; and
- enabling access to appropriate therapeutic support, recognising the significant toll on victims and witnesses mental health, pre-trial and beyond.

For the experts by experience who took part in *Making Justice Work* many of these needs had gone unmet.

## 6.5 A sense of justice?

*"You go through all this - having to relive what happened, through your interviews, for them to turn around and say 'nah, we're not going to take it any further'. Devastating – it is devastating"* (young person I).

Young people's perceptions and experiences of justice often differ significantly from a systemic definition of justice. This means that for many young people, ending their engagement with criminal justice processes does not provide the closure, relief or satisfaction anticipated. This is particularly true in cases where:

- an NFA decision was reached by the police or CPS;
- charges are reduced or dropped, either prior to court or during the hearing, usually without consultation with young people;
- different victims in multiple victim cases receive differential treatment and outcomes; and/or
- sentences are not felt by young people to reflect the severity of crime.

Even in cases where perpetrators receive custodial sentences many young people are left processing complex emotional responses such as guilt or affection towards perpetrators, or ongoing fears about the consequences for their safety. All of these findings highlight the need for young people to access robust post court or post NFA support.

The combination of the traumatic impact of participation in the court process, combined with disappointment around outcomes, led many of the experts by experience to question the benefits of engagement in the process. It similarly led many professionals, who identified much of the same dissatisfaction with the processes outlined above, to ask the same type of questions: Is involvement in a court process necessarily the best thing for a child? Does it deliver justice and, if so, whose definition of justice?

## 6.6 Dissonance between policy and practice

A striking finding of *Making Justice Work* is that the majority of measures identified by participants as likely to improve young people's negative

experiences of criminal justice processes, are already recommended or feasible within the current policy and guidance context. They are not, however, being consistently translated into practice.

Despite high-level statements such as “victims and witnesses can now be sure what support they will get and at what stage, who to talk to about their case, and what to do if things go wrong” (MoJ 2014:10), the evidence gathered in this research suggests this is not yet the reality on the ground for many young people in CSE cases, nor is it obviously apparent how this will change. This picture is supported by findings from wider related research which highlight that despite some areas of improvement over the last decade, an enduring gap remains between policy and young victims’ and witnesses’ experiences (Plotnikoff and Woolfson 2004, 2009; Hayes and Bunting 2013).

The contributions of both the experts by experience and professionals who participated in *Making Justice Work* present a context of variable professional practice in which:

- current best practice guidance and policy is inconsistently applied, within both investigation and prosecution processes; and
- examples of good practice often remain reliant on an individual’s knowledge, understanding or commitment rather than being embedded in a wider professional culture.

There remains a clear need to bridge the gap between policy and practice and to ensure that stated entitlements and recommendations are effectively translated into exemplary practice when supporting all young victims and witnesses, irrespective of where they live or which professionals they engage with.



# 7 Priority Areas for Change

## 7.1 Introduction

This research took place within a climate of increasing acceptance of the need to improve both responses to CSE, and victims' and witnesses' experiences of the criminal justice system. However, whilst the various initiatives that have emanated from this (highlighted throughout this report) are to be welcomed, their full impact is not yet apparent and considerable room for improvement remains.

In the sections which follow we outline six priority areas for change:

- Upholding the 'best interests' of children and young people;
- Effective communication with young victims and witnesses;
- Ensuring meaningful access to complaints procedures and forms of redress;
- Increased involvement of young people in decision-making;
- Specialist training and ongoing professional development; and
- Addressing barriers to implementation of recommended practice.

The need to address some of these issues has already been identified in a number of current initiatives, but measures that will better support and safeguard young people through an inherently difficult process justify reiteration. The fact that these areas for change are based on the views of those the system is there to safeguard means they offer a unique – and much needed – contribution to existing discourse in this area. It is vital that both current and new initiatives in this field are informed by, and continually measured against, the experiences of such young people.

## 7.2 Upholding the 'best interests' of children and young people

**All decisions and actions should be underpinned by the principles of safeguarding and promoting the 'best interests' of the child and assessed against these baseline standards.**

The paramouncy of children's best interests is clearly outlined in legislation.<sup>42</sup> However evidence from this research suggests that it is not fully or consistently realised in practice within the confines of the criminal justice system. Developments in this field would serve both victims' and witnesses' welfare needs, and those of the investigation.

Key issues identified within this research that would help to promote children's safety and best interests include:

- Early and systematic identification of vulnerability by the police and access to associated provisions;
- Adherence to good practice guidance around ABE interviews, specifically in relation to rapport building, reducing anxiety, questioning techniques, willingness to let young people have a supporter present and early CPS involvement;
- Effective multi-agency planning and coordination to enable a holistic assessment and response to young people's needs;
- Ensuring every victim and witness has access to an independent specialist advocate throughout their engagement with the criminal justice system;
- Proactive facilitation of pre-trial therapy and removal of the barriers that currently impinge on this;
- Enabling proper preparation for court, including pre-trial visits with trained and sensitive personnel; familiarisation with Special Measures; appropriate facilitation of memory refreshing; and pre-trial contact with Barristers;

<sup>42</sup> The 'paramouncy principle' is outlined within The Children's Act 1989 which notes that the child's welfare should be the paramount concern for a court determining any question with respect to a child. This is applicable for all children aged under 18 years.

- Taking all steps to avoid unnecessary delays to, and rescheduling of, trial dates in CSE cases;
- Increased use of judicial powers to manage ground rules hearings and trials, and consider restricting access to the court;
- Comprehensive safety planning for children's attendance at court, including ensuring the physical set up of courts can facilitate separation of victims and perpetrators, and their supporters;
- Greater willingness to facilitate involvement of witness supporters;
- Further development of opportunities for peer support initiatives; and
- Provision of post-court support, in recognition of the particular vulnerabilities associated with this time.

### 7.3 Effective communication with young victims and witnesses

**All communication with young people should be underpinned by principles of accessibility, participation, transparency and respect. Communication should be proactively initiated in a timely manner and enable opportunities for meaningful dialogue.**

A recurring theme throughout *Making Justice Work* is the significance of proactive, timely and effective communication with young victims and witnesses and those supporting them. Our findings suggest that effective communication should not only be viewed in terms of victims' and witnesses' rights and entitlements (MoJ 2013a, 2013c) but also as a central element of safeguarding.

Evidence from the research demonstrates how effective communication can reduce young people's fears, anxieties, sense of disempowerment and self-blame. It can also heighten their trust in professionals, enhance their ability to cope with difficult decisions and support them to give their 'best evidence'.

In practice effective communication means:

- avoidance of jargon;
- clarity of message, particularly around young people's entitlements;
- using sensitive and respectful language;
- promoting access to independent support and

advocacy;

- considering in all cases the use of a registered intermediary, at the earliest possible stage;
- providing explanations which promote young people's understanding of systemic requirements – supporting them to understand why certain things happen and why decisions are made;
- facilitating informed choice on the part of young people; in relation to issues such as the engagement of witness supporters or their preferences for Special Measures; and
- ensuring access to a named single point of contact with responsibility for communicating case progress and regular contact with a young person and their supporters.

The need for improved and early communication is particularly relevant during phases of investigation and prosecution where young people have limited direct involvement with professionals. For example, CPS decision-making, plea bargaining or sentencing. It is vital that all young people have formal opportunities to discuss investigation or prosecution outcomes with relevant professionals. This should be facilitated in a way that promotes young people's full understanding of, and ability to process, final case outcomes.

### 7.4 Ensuring meaningful access to complaints procedures and forms of redress

**Complaints processes and other forms of redress must be accessible and meaningful for young people. Young people need access to informed independent advocacy to support them to seek redress when standards of engagement fall short of what should be expected.**

Ensuring that current systems for complaints and redress are accessible, meaningful and effectively implemented are a vital aspect of upholding standards of best practice and addressing victims' and witnesses' needs. Throughout the research, examples were given where poor practice went unchallenged due to a young person's lack of knowledge about such systems and/or cynicism about their effectiveness. This further compounded young people's sense of injustice and disempowerment and resulted in missed opportunities for improvements to responses and practice.

## 7.5 Increased involvement of young people in decision-making

**Wherever possible, decisions should be made *with* – rather than *for* – young people. Professionals should also take account of the evolving capacities of adolescents when considering the ways in which they can involve young people in decision-making processes.**

A key message emerging from the experts by experience was the need for further progress in upholding their right to have their opinions taken into account in all decisions made about them, in line with Article 12 of the United Nations Convention on the Rights of the Child and The Children’s Act (1989).

Upholding this commitment means supporting children and young people to express informed preferences and have these considered during decision-making processes. There was clear evidence that involving children and young people in decision-making is an important means of countering the disempowerment that often characterises their involvement in criminal justice processes; increasing their sense of safety and control and encouraging their continued involvement.

## 7.6 Specialist training and ongoing professional development

**All relevant staff within the police, CPS, Court Service, judiciary and relevant voluntary sector services should receive the training, supervision and support required to enable them to understand and respond appropriately to young people affected by CSE.**

Perhaps the most formative aspect of children and young people’s experiences of the criminal justice system is the demeanour, skills and understanding of those frontline professionals they directly encounter during investigations, preparation for court, and trials. *Making Justice Work* and related research show that the conduct of such individuals remains central to young people’s ability and willingness to engage with

investigations and prosecution. It also impacts upon their experience of safety and wellbeing throughout these processes.

We recognise that Local Safeguarding Children Boards and police forces across England are currently investing in such training (OCC 2013, 2015) and that initial efforts to develop and pilot specialist pan-legal training are also underway (Advocacy Training Council 2011).<sup>43</sup> Evidence from this research would suggest that, in addition to procedural aspects of responding to CSE, such training should include a specific emphasis on:

- professional principles and values, and how these impinge upon practice;
- understanding, engaging and communicating with adolescents affected by CSE;
- understanding the complexities of CSE and responses to trauma; and
- recognition of the potential risks that engagement with the criminal justice system may pose to young people and their wellbeing.

Given the significance and shortcomings of many young people’s initial contact with police, CPS and court staff, such training should not be limited to specialist teams but also available to all frontline staff. Training must be evidence-based, regularly reviewed and updated. It must be accompanied by ongoing support and supervision that acknowledges the challenge and impact of this work on individuals and, as explored in section 7.4 above, meaningful systems for redress where practice falls short of expected standards.

## 7.7 Addressing barriers to implementation of effective and recommended practice

**Active consideration must be given to understanding the reasons why best practice guidance and policy is inconsistently applied, within both investigation and prosecution processes; and too often relies on an individual’s knowledge, or commitment.**

The majority of measures identified by participants as likely to improve young people’s experiences of criminal justice processes, are already recommended or feasible within the current policy and guidance context. As previously outlined in section 6.6 of the report they are not, however, being consistently translated into

<sup>43</sup> See footnote 10 for more details of this work, led by Judge Rook and the ATC.

practice. There remains a clear need to bridge this gap between policy and practice to ensure that all young people, irrespective of the area they live in or individual they encounter, experience exemplary standards of practice across all phases of the criminal justice system.

## 7.8 Concluding thoughts

Prosecution is rightly recognised as a critical aspect of safeguarding children and young people from CSE (DCSF 2009, OCC 2013). With a few notable exceptions, successful prosecution continues to rely heavily on the direct engagement of children and young people victimised through, or witness to, CSE. For this reason getting it right for those children and young people who engage with these processes remains the absolute priority, albeit an ongoing challenge.

Children and young people's engagement in criminal justice processes must heighten, rather than reduce, their sense of safety and wellbeing. Investigations and prosecutions must not only be

seen as a means of safeguarding through bringing offenders to justice, but also as processes that are themselves safe for children and young people to engage with.

The evidence gathered throughout *Making Justice Work* suggests that this is currently far from the case, with young people and those professionals who work with them repeatedly describing the process as disempowering, traumatic and potentially counter-productive to recovery. Consequently, the majority of the experts by experience said that in its current form they would not go through it again, a message the professionals observed to be true of the majority of young people they supported.

This is clearly a critical issue that must be addressed. It is our hope – and the expressed hope of the experts by experience who participated in this work – that the observations and experiences shared within this report will provide useful insights for the range of individuals and agencies currently driving forward initiatives for change within this field.



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