The treatment of young people at court

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Today's meeting is focusing on the customers of the justice system. I would like to concentrate on one part of that customer base, namely young people, and on one part of the justice process, namely what happens at court. I should also acknowledge that the lessons we have learned about the needs of young people are now recognised to apply also to vulnerable adults. Indeed, recent legislation in England and Wales has extended the special measures previously available only to young witnesses to vulnerable adult witnesses.

Although I will be speaking specifically about the treatment of young people in the justice system of England and Wales, I hope you will agree that the challenge is the same for all jurisdictions.

How are we to meet this challenge? I want to distinguish two key tasks we must address which are quite distinct but of equal importance.

WITNESSES

Let me begin by talking about young people as witnesses. In England and Wales, young people seldom give evidence in family or civil proceedings and so what I have to say will concern young witnesses in criminal proceedings. Nevertheless, many of the points apply irrespective of the kind of proceedings. It is as well to keep in mind why we are applying the principles. It is *not* merely to be nice to young people, however desirable that might be, but to obtain their best evidence. For instance, Australian research has demonstrated that young people's ability to choose the manner in which they give evidence affected their performance more than the particular way they gave evidence.

How have criminal courts in England and Wales court adapted their procedures to meet the needs of young witnesses? We have certainly moved a long way in attempting to take account of the testimony of young people. In the 1980s, some judges recognised that certain young witnesses were so intimidated by the sight of the defendant that they were unable to tell their story to the court. They began to allow young witnesses to give their evidence from behind a screen. Actually, this practice had originally been introduced not for young people but for members of the security services in order to protect their identity. Of course, with young witnesses the purpose was to avoid the need for seeing the defendant but the method used was the same.

Taking the testimony of young witnesses by video link was introduced to our criminal courts in 1988 and extended in 1991. But problems remained. Whether screens or video links were allowed depended on the discretion of individual judges and this resulted in unpredictability and uneven practice This was

described by a former head of our Prosecution Service as "justice by geography". In 1999, parliament passed the Youth Justice and Criminal Evidence Act which narrowed judicial discretion by introducing a presumption that the evidence of young witnesses would be given by video link. Interestingly, Canada and South Africa are also going down the route of constraining judicial options by statute.

However, this approach has produced problems of its own. In our determination to standardise the way in which a young witness gives evidence at a criminal trial, we have framed our legislation in such a way that the views of the young person about how they wish to give evidence are not taken fully into account. However well intentioned, our legislation is now so complex that it has been described by one Member of Parliament, as 'linguistic linguine'.

Let me give you an example. A case recently before the courts involves a young teenager who was the victim of a serious assault in which his eye was gouged out. The trauma he has suffered has made him claustrophobic and unhappy about giving his evidence from the small enclosed video link room. But the law has introduced a presumption that this is how his evidence will be given. The presumption can only be overturned by a judicial decision that it would be contrary to the interests of justice.

The judge required the young witness to come to court for a pre-trial hearing. In open court and in the presence of the defendant, he had to explain about his claustrophobia and the trial has been delayed as a result. This completely defeats the purpose of the legislation – to improve the quality of evidence by reducing the stress experienced by the witness.

How do we avoid such situations? The challenge is to achieve greater consistency in the availability of special measures but still accommodate the views of each young witness about how they wish to give evidence. Legislation must allow for this but it is not the whole answer. We also need training for judges and lawyers to ensure legislative provisions are applied in an enlightened and just manner.

The preparation and provision of support for young witnesses in England and Wales is more encouraging. We now recognise the importance of providing such support ahead of trial and our Witness Service, which is present in every criminal court, have trained staff who work with young witnesses to explain the purpose and nature of the proceedings. Witnesses routinely go on a pre-trial visit to the courtroom, have a private area away from the public in which to wait on the day of trial and are sometimes accompanied by their supporter when giving evidence.

My colleague Joyce Plotnikoff and I have produced materials – a Young Witness Pack and a video - to help supporters in their work with young witness and their parents or carers. Nevertheless, all this costs money and concerns remain that the quality of support available around the country is still uneven because of the limited resources available.

YOUNG DEFENDANTS

Let me now turn to young defendants. The distinction between young defendants and witnesses is clear in law, but in practice the problems of understanding and engaging with court procedures are similar for both. Indeed, we are often talking about the same young people who may one day attend court as a witness and the next as a defendant.

This is true, for instance, in relation to robberies of mobile phones which have soared in recent years resulting in a huge increase in the number of young people appearing in court as defendants and witnesses. Yet our legislation explicitly excludes young defendants from eligibility for the special measures available to young witnesses. It remains to be seen whether judges will nevertheless use their discretion to allow young defendants access to such measures in appropriate cases.

The case which focused attention on the treatment of young defendants by the court is known as the Bolger case. Some of you may know of it. Two 10 year-old boys in Liverpool led away the two year-old James Bolger from a shopping mall and brutally murdered him. They were subsequently tried and convicted at a jury trial in the Crown Court. There were few concessions made to the youth of the defendants during court proceedings and they appeared disengaged from the proceedings throughout. A case based on a range of grounds was taken to the European Court of Human Rights here in Strasbourg. The Court identified the defendant's effective participation in the trial[1] as an essential requirement of Article 6 of the European Convention on Human Rights.

Following the ECHR ruling, the Lord Chief Justice issued a Practice Direction[2] aimed at minimising the formality of young defendants' Crown Court trials and enhancing their participation. It recommends that the court should explain the proceedings to a young defendant, remind legal representatives of their continuing duty to explain each step of the trial, and should ensure, so far as practicable, that the trial is conducted in language which the defendant can understand.

Joyce and I undertook a study of young defendant's understanding about court for the Youth Justice Board In England and Wales. We found a depressing picture:

- many had basic communication problems (speech and comprehension, not just reading and writing)

[1] See also Article 12 of the UN Convention on the Rights of the Child which requires member States to assure to children able to form their own views the right to express these freely in all matters affecting the child, their views being given due weight in accordance with the child's age and maturity. Children shall be given the opportunity to be heard either directly, or through a representative or an appropriate body.

[2] Practice Direction (Crown Court: Trial of children and young persons) [2001] 1 Cr.App.R. 483.

- young defendants, **INCLUDING REPEAT OFFENDERS**, are often confused about what happens in court and at other stages in the legal process
- many do not think they are entitled to be heard in court
- many actively disengage from what is going on in court
- many do not understand the decisions of the court before they leave the courtroom.

Our study mapped out the contents of a Pack for Young Defendants to address these problems of understanding. The government has undertaken to produce the Pack and to allocate each young defendant to a professional person to prepare them and their parents or carers for the court appearance.

Let me finally return to the challenge It is only quite recently that young people have been included in surveys of court users. Their feedback is crucial if we are to make our legal processes appropriate to their needs. I would encourage all jurisdictions to consult young people about their experiences at court and to take account of what they say. For too long, young people have been a poorly-served segment of our customer base. It is time to put things right.