

The Research, Development and Statistics Directorate exists to improve policy making, decision taking and practice in support of the Home Office purpose and aims, to provide the public and Parliament with information necessary for informed debate and to publish information for future use.

Findings are produced by the Research, Development and Statistics Directorate. For further copies contact:

Communication Development Unit
Room 264,
Home Office,
50 Queen Anne's Gate,
London SW1H 9AT.

Tel: 020 7273 2084

Fax: 020 7222 0211

publications.rds@homeoffice.gsi.gov.uk

© Crown copyright 2004

ISSN 1473-8406

Printed by: TABS

Key findings from the Surveys of Vulnerable and Intimidated Witnesses 2000/01 and 2003

Becky Hamlyn, Andrew Phelps and Ghazala Sattar

A key aim of the Youth Justice and Criminal Evidence Act 1999 was to improve the treatment of vulnerable and intimidated witnesses in England and Wales and enable them to give best evidence in court. The Act contained a range of 'special measures' to assist vulnerable and intimidated witnesses and most were implemented in the Crown Court in July 2002. To assess the impact of these changes, surveys of vulnerable and intimidated witnesses were conducted before (phase 1) and after (phase 2) the date of implementation. This Findings looks at the reaction of these witnesses to the measures and the impact on their level of satisfaction with the criminal justice system.

Key points

- Vulnerable and intimidated witnesses who used special measures were less likely than those not using such measures to feel anxious or distressed overall. A third of vulnerable and intimidated witnesses who used special measures said they would not have been willing and able to give evidence without the availability of these measures.
- The vast majority of vulnerable and intimidated witnesses who used special measures found them helpful. The value of these measures is further demonstrated by the extensive level of demand for them among those witnesses not given access to them.
- Vulnerable and intimidated witnesses who used special measures were significantly more likely to express overall satisfaction with the criminal justice system.
- Although vulnerable and intimidated witnesses were found to be less satisfied with their overall experience of the criminal justice system than victims and witnesses generally, there was an improvement in satisfaction between phases 1 and 2 of the survey for some groups. However, there was a statistically significant fall in the proportion satisfied with the defence lawyer (from 45% to 34%).
- The most important predictors of satisfaction among vulnerable and intimidated witnesses were: satisfactory treatment by the police and, in court, by defence lawyers; the feeling that they had been able to give their evidence accurately; and lower levels of anxiety or distress.

The report *Speaking Up For Justice* (Home Office, 1998) made 78 recommendations to improve the treatment of vulnerable and intimidated witnesses (VIWs) within the criminal justice system and enable them to give 'best evidence' (i.e., evidence that is complete, coherent and accurate). Special measures requiring legislation were included in the Youth Justice and Criminal Evidence Act 1999. These were screens, video-recorded evidence-in-chief, live television link, clearing the

public gallery of the court, removal of wigs and gowns in court, allowing witnesses to use communication aids, video-recorded pre-trial cross- and re-examination and the use of intermediaries. Other forms of assistance required administrative action and training (i.e., pre-court familiarisation visits, presence of a supporter in court, escorts to and from court, liaison officers, separate waiting areas and use of pagers).

The views expressed in these findings are those of the authors, not necessarily those of the Home Office (nor do they reflect Government policy)

The categories of persons eligible for special measures are:

- children under 17 years
- witnesses with a physical disability or physical disorder
- witnesses with a learning disability or mental disorder
- witnesses likely to suffer particular distress, including victims of sexual offences and witnesses who fear or suffer intimidation.

As part of a Home Office funded evaluation of the new measures, surveys of samples of VIWs were undertaken *before* the implementation of special measures (phase 1) between November 2000 and February 2001 and again *after* special measures had had time to 'bed in' (phase 2) from April to June 2003.

Samples of VIWs were identified and recruited for the survey by the Witness Service. In phase 1, VIWs were recruited at all courts where a Witness Service operated between October and December 2000. A similar process was followed in phase 2, using the same courts. A total of 552 witnesses were interviewed in phase 1 and 569 in phase 2. A parent or guardian answered on behalf of witnesses aged 13 or under. Proxy interviews were also conducted with some other witnesses, such as people with severe learning disabilities.

Profile of victim and intimidated witnesses interviewed

Given the lack of information on the number of VIWs, it is uncertain whether those interviewed are fully representative of VIWs generally. However, at both stages, the sample profile closely matched that of all witnesses identified by the Witness Service as vulnerable. There was also a reasonably close match between the profiles of the phase 1 and phase 2 samples.

In phase 2, 60% of witnesses interviewed were female (which is likely to reflect the proportion of witnesses who were victims of a sexual offence). Child witnesses (aged under 17 at the time of the hearing) accounted for 42% of those interviewed. 62% of all VIWs were victims and 37% other prosecution witnesses. Only 1% were defence witnesses, probably because the Witness Service tends to have little or no contact with defence witnesses. It also seems plausible that fewer defence witnesses are vulnerable. The profile of witnesses was similar in both survey phases, although there was a rise in the proportion of child witnesses (from 34% to 42%) between phases 1 and 2 (Table 1).

Table 1 Categories* of vulnerability

	Survey phase	
	1	2
	%	%
Experience/fear of intimidation	69	70
Aged under 17	34	42
Illness/disability	14	13
Victim of sexual offence	16	15
Learning disability	5	7

Note: * Categories were self-assessed

Use of special measures

The phase 2 survey was conducted after many special measures had been implemented, whereas when the phase 1 survey took place only a limited number of such measures was in place for certain groups (i.e., live TV link and video-recorded evidence-in-chief for child witnesses). The results from the two surveys show an increase in the proportion of witnesses using special measures.

Video-recorded evidence-in-chief

Giving evidence-in-chief by means of a video-recording made prior to the trial can be of particular benefit to young children with limited language skills. This special measure was available for child witnesses in both phases, although by phase 2 it had also been implemented in Crown Courts for vulnerable witnesses. Further roll-out to all VIWs (i.e., including intimidated witnesses) is still to come. Very few adult VIWs used this special measure in phase 2, although the proportion of child witnesses using it increased from 30% to 42% between phase 1 and phase 2.

Live television link

This special measure allows witnesses to give evidence from outside the courtroom. Although the defendant can see or hear the witness, witnesses can only see the lawyer questioning them and not the defendant. The aim is to create a less intimidating environment in which to give evidence. In phase 1, this special measure was only available for child witnesses, but by phase 2 its use had been extended to other VIWs. Between phase 1 and 2, the availability of live link (whether or not actually used) doubled from 43% to 83% of child witnesses. Additionally, 15% of adult VIWs in phase 2 were offered this special measure. A total of 46% of all VIWs in phase 2 were offered use of a live TV link. The majority of these – 39% of all VIWs – used it, an increase from 15% in phase 1.

Screens

In phase 1, courts had discretion to place screens around the witness box, in order to reduce stress and intimidation by preventing the witness from seeing the defendant, but still allowing the witness to see the judge, justices, legal representatives and any interpreters (and vice versa). By phase 2, this power was placed on a statutory footing. All VIWs who gave evidence without using a live TV link were asked if screens were used. The proportion of this subgroup using screens rose from just 3% in phase 1 to 13% in phase 2. When combined with those availing themselves of the live TV link, the proportion who did not have to see the defendant almost trebled from 17% to 47%.

Clearing the public gallery

Even before the 1999 Act, the courts in England and Wales had discretion – although anecdotal evidence suggests it was rarely used – to order that some or all of the evidence be heard without the public and press being present. The 1999 Act places this power on a statutory footing for cases involving sexual offences or those involving intimidation. The extent to which this special measure was actually used was low in both surveys – 8% and 10% in phases 1 and 2 respectively.

Removal of wigs and gowns

The courts also had discretion before the 1999 Act to order judges and lawyers to remove their wigs and gowns, if it was felt this would help vulnerable witnesses give evidence. This special measure was mostly associated with child witnesses. The 1999 Act places this power on a statutory footing, and it is available where a court considers it will help a vulnerable witness give best evidence. Although still relatively rare, removal of wigs and gowns rose from 8% to 15% between the survey phases and was particularly common for child witnesses (25% in phase 2).

Perceived value of special measures

Witnesses using special measures in phase 2 rated them very highly. For example, nine in ten witnesses using the live TV link found this helpful and a similar proportion found using video-recorded evidence-in-chief useful. The importance of special measures is further evidenced by the finding that 33% of witnesses using any special measure said that they would not have been willing and able to give evidence without this. This suggests that an increased proportion of cases involving VIWs are now resulting in offenders being brought to justice which would not have occurred before the special measures.

The value of special measures is further demonstrated by the extensive level of demand among witnesses who were not given access to them. Screens and/or live TV link were thought to be particularly useful, with around three-fifths of all VIWs who gave evidence without these special measures stating that they would have found them useful.

Consultation about measures

The 1999 Act creates a requirement on the court to consider the views of VIWs in decisions about special measures and other forms of assistance. The need to consult VIWs is also emphasised in guidance aimed at all criminal justice agencies (Home Office, 2000). Only 12% of witnesses in the phase 1 survey said they were consulted about the use of measures, although this rose nearly three-fold to 32% in phase 2. In phase 2, nine out of ten witnesses who were consulted about measures said that their views had been acted upon – at least to some extent.

Use of special measures and perceptions of the criminal justice system

Evidence suggested that witnesses using special measures were happier with their experience than other VIWs. For instance, those using special measures in phase 2 were more likely to be satisfied overall (76%) compared with those not using such measures (65%). Witnesses using special measures were also less likely to experience anxiety (63%) than those not using them (73%). There was also some evidence that those using special measures found cross-examination less distressing. 41% said they had been upset a lot by cross-examination compared with 56% not using special measures. Witnesses using special measures were also more likely to have a favourable opinion of the criminal justice system. For example, they were more likely to believe that the system was effective in bringing criminals to justice, meeting the needs of victims and treating witnesses fairly and with respect.

Overall satisfaction

Changes between phases 1 and 2

Compared with the Witness Satisfaction Survey 2002 which covered all witnesses, VIWs were less satisfied with their overall experience of giving evidence. Overall, 69% were very or fairly satisfied with their treatment compared with 78% in the Witness Satisfaction Survey 2002. However, this is an improvement on the satisfaction rating among VIWs in phase 1. The increase from 64% to 69% is statistically significant at the 10% level. Moreover, there has been a decline in the proportion of VIWs very dissatisfied with their experience (from 22% in phase 1 to 17% in phase 2). The increase in overall satisfaction between phase 1 and 2 surveys was evident among most subgroups of VIWs (Table 2), although there was a particularly marked increase in the satisfaction of those either experiencing intimidation (from 48% to 59%) or fearing it (from 66% to 80%).

Table 2 Witness satisfaction by different subgroups of witnesses

	Phase 1 % satisfied	Phase 2	Change from phase 1 to 2
Aged under 17	73	76	+3
Aged 17 or over	59	64	+5
Experienced intimidation	48	59	+11*
Fearred intimidation	66	80	+14*
Neither experienced nor feared intimidation	78	81	+3
Victim	61	67	+6**
Other prosecution witness	67	71	+4
Crown Court witness	60	66	+6
Magistrates' court witness	67	71	+4
Victim of sexual offence	66	67	+1
Victim of other offence	63	69	+6*
Used special measures		76	
Didn't use special measures		65	
All VIWs	64	69	+5**

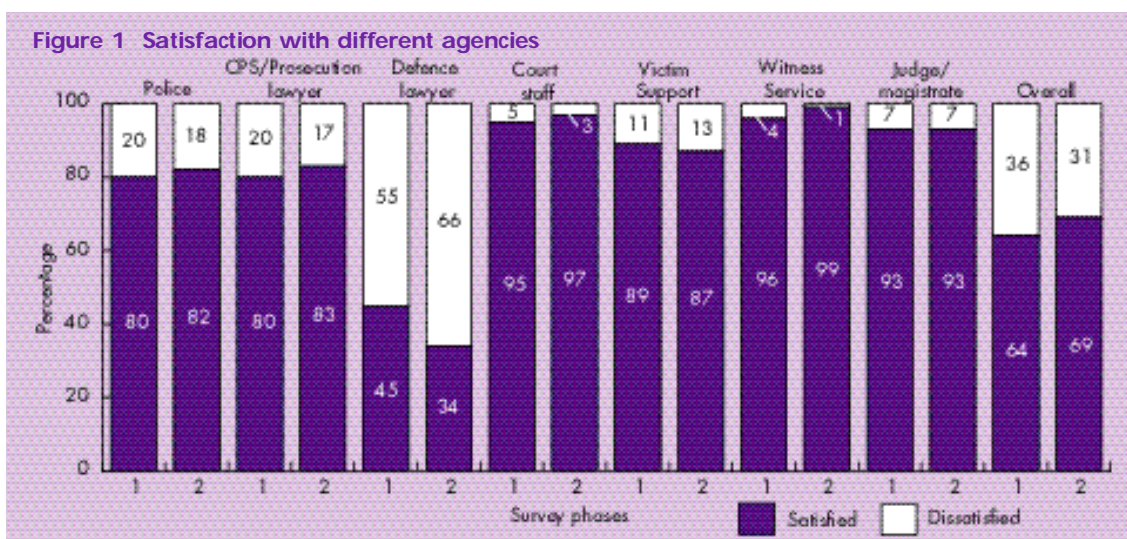
Note: *denotes significant difference from phase 1, $p < 0.05$
**denotes significant difference from phase 1, $p < 0.10$

Satisfaction with criminal justice system agencies

As in the Witness Satisfaction Survey 2002, satisfaction was higher with individual criminal justice agencies than with the system overall. It was particularly high for the Witness Service, court staff and judges/magistrates (Figure 1). Satisfaction ratings for individual agencies were largely unchanged between survey phases, except for defence lawyers, where satisfaction fell from 45% to 34%. Consistent with this finding, prosecution witnesses in phase 2 were more likely than those in phase 1 to consider the defence lawyer lacking in courtesy towards them and giving them inadequate opportunity to ask questions.

Variations in satisfaction ratings

Overall satisfaction varied by type of vulnerability. For example, child witnesses tended to be more satisfied (76%) than adults (64%) in phase 2. People who had experienced or feared intimidation tended to be less satisfied (64%) than those who had not (81%) in phase 2 (Table 2). In both surveys,



witnesses were more likely to be satisfied when they had not feared or experienced intimidation, were satisfied with court facilities, had received adequate information and where the defendant had been convicted. However, in multivariate analysis, the strongest satisfaction 'drivers' were satisfaction with the police and defence lawyer, satisfaction at being able to give evidence accurately and low levels of anxiety or distress about testifying.

Conclusions

The phase 1 and 2 surveys demonstrated that efforts to improve the treatment of VIWs have enhanced satisfaction ratings for some groups. The increase in overall satisfaction from 64% to 69% is statistically significant at the 10% level and it is one of a number of indicators which suggest improved satisfaction among VIWs.

However, the survey results suggest that while satisfaction has improved in a number of areas, there is still some way to go before the needs of VIWs are fully met. For example,

although reduced, anxiety levels among VIWs are still high and there is still a fairly wide gap between their satisfaction ratings and those of witnesses in general. However, the provisions of the 1999 Act are not yet fully implemented, and more widespread availability of special measures, plus the introduction of those not yet implemented (the use of intermediaries and video-recorded cross- or re-examination) may improve satisfaction further. Certainly, the surveys show that there is still considerable unmet demand for use of special measures.

Given the positive views of VIWs about the value of the various special measures, it would be expected that widespread implementation – alongside other initiatives to increase witness satisfaction generally – will raise satisfaction levels further. These surveys have provided important evidence that special measures are working, which should help with the provision of an even better service for this important group in the future.

Methodological note

The surveys of vulnerable and intimidated witnesses were conducted for the Home Office by an independent survey organisation, BMRB Social Research. The surveys covered mainly prosecution witnesses who attended court, whether or not required to give evidence. Expert witnesses, police witnesses and others giving evidence in a professional capacity were excluded from the survey. Of witnesses approached at the recruitment stage at phase 1, 65% agreed to participate (60% at phase 2). At phase 1, 552 interviews were achieved (a net response rate based on all recruited of 80%); at phase 2, 569 interviews were achieved (81%).

References

Home Office (1998). *Speaking up for justice*. Report of the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System. London: Home Office.

Home Office (2000). *Achieving best evidence in criminal proceedings: guidance for vulnerable and intimidated*

evidence, including children – consultation paper. London: Home Office.

Angle, H., Malam, S. and Carey, C. (2003). *Key findings from the witness satisfaction survey*. Home Office Research Findings No.189. London: Home Office.

For a more detailed report see *Are special measures working? Evidence from surveys of vulnerable and intimidated witnesses* by Becky Hamlyn, Andrew Phelps, Jenny Turtle and Ghazala Sattar (2004). Home Office Research Study No 283. Copies are available from the Communication Development Unit. It is also available on the Home Office RDS website <http://www.homeoffice.gov.uk/rds/>

Becky Hamlyn and Andrew Phelps are at BMRB Social Research. Ghazala Sattar is a Senior Research Officer in the Offending and Criminal Justice Group, Home Office Research, Development and Statistics Directorate.