



Ministry
of Justice

Alex Davies-Jones MP
Parliamentary Under-
Secretary of State

Gweinyddiaeth
Cyfiawnder

Andy Slaughter MP, Chair
Justice Select Committee
House of Commons
London
SW1A 0AA

MoJ ref: SUB 122150

7 March 2025

Dear Andy,

IMPACT EVALUATION OF SECTION 28

I am writing to inform you of the publication of the Ministry of Justice's (MoJ) impact evaluation into pre-recorded cross examination (section 28). This report, now available on GOV.UK, represents an important step forward in providing an evaluation of the impact of the measure on case outcomes and court effectiveness.

As the Justice Select Committee will be aware, published evidence on the impact of section 28 has been limited to date. The previous Committee expressed concerns about the lack of robust evidence on the effects of section 28, as well as operational challenges associated with the measure, prompting the launch of a dedicated inquiry in June 2023.

The MoJ committed to undertaking an impact evaluation to assess the effects of the measure on conviction rates, court functioning, and the timeliness of cross-examination.

Our impact evaluation examines data from the period January 2019 to September 2022 – coinciding with the rollout of the measure to vulnerable witnesses in all Crown Courts (completed in November 2020) and for victims of sexual and modern slavery offences (completed in September 2022). Analysts examined the effect of section 28 across the entire Crown Court caseload, by comparing courts with and without the measure at different phases of rollout.

Our findings indicate that:

- The measure does not appear to have an effect on a jury's decision to acquit or convict a defendant in individual cases, when we control for the wider impact of court, case mix and trends over time. This indicates that section 28 does not seem to impact case outcomes in comparison to live testimony or undermine the fairness of trials.
- There is no evidence of increasing rates of section 28 usage having a negative impact on trial effectiveness across the Crown Court system. There may have been an initial effect following its implementation, but this seems to have diminished quickly. This indicates that listing processes remain effective, and the Crown Court system has adapted well to the rollout.
- The measure appears to bring forward the timing of cross-examination by approximately five months. Trial dates typically start one month later than cases without section 28 - possibly due to a combination of the factors prevalent in the specific types of cases where section 28 is used and the section 28 process itself. Our analysis was unable to examine the specific factors causing this delay.

Overall, our impact evaluation suggests that based on a sample of s28 cases between January 2019 to September 2022, the measure helps victims to give evidence earlier and avoid the stress of a live trial without reducing the chance of a conviction at case level, significantly delaying the trial or disrupting the wider functioning of the court. However, it is important to note that these findings reflect aggregate trends across our dataset and provide insights into general patterns. While the measure may not have a discernible effect on these factors at a systemic level, individual case outcomes may still vary based on their specific circumstances.

It is also worth noting that due to operational and legal constraints during the measure's rollout, including COVID-19 lockdowns, it was not possible to conduct a controlled trial or experiment, and our evaluation was based on HMCTS administrative datasets. This prevented assessment of the effect of section 28 on areas such as witness or defendant behaviour (including witness attrition or guilty pleas). Additionally, due to the limited sample size, we were unable to determine the measure's effect on conviction rates in adult rape cases specifically. However, in controlling for case mix, time, and court-level effects, this is still the most robust evaluation of section 28 to date, as it has controlled, as far as the data allows, for other factors that could impact conviction rates as well as the measure.

It should also be noted that our evaluation is not directly comparable to Professor Cheryl Thomas's preliminary research findings, submitted to the previous Committee's inquiry into section 28. For instance, our analysis examines the measure's impact on case outcomes - looking at whether cases as a whole, where section 28 was present, led to a conviction. However, Professor Thomas's research considers its effects on individual charges, analysing whether each charge in a case resulted in a guilty verdict or not. Additionally, the timeframes under review differ between the two evaluations. Our data spans January 2019 – September 2022, a period which includes the rollout of the measure to every Crown Court for sexual and modern slavery offences, while Professor Thomas's analysis covers June 2016 – June 2023.

We will continue to keep the operation of section 28 under review, including considering any new research that is published. Additionally, we continue to work with the judiciary and justice system partners to ensure section 28 works as well as possible for vulnerable and intimidated victims and witnesses, including through ongoing upgrades to technology.

I hope these findings provide helpful information on the effects of the measure. I look forward to continuing to work together to ensure that victims are well supported through the justice system, can give their best evidence in court, and can access justice.

Yours Sincerely

A handwritten signature in dark ink that reads "Alex Davies-Jones". The signature is written in a cursive, slightly informal style.

ALEX DAVIES-JONES MP
Minister for Victims and Violence Against Women and Girls