



Andy Slaughter MP, Chair
Justice Select Committee
House of Commons
London
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Dear Chair and Members of the Justice Select Committee,

Thank you for inviting me to give evidence to the Committee on 9 September 2025 on the use of pre-recorded cross examination (s28) and for the invitation to provide further information that there may not have been time to cover in the oral evidence session. I appreciate the opportunity to do so.

This letter covers the following:

1. Relevance of conviction rates to the Youth Justice and Criminal Evidence Act 1999
2. Nature of the debate around conviction rates and s28
3. Comparing the UCL and MoJ data analysis of outcomes in s28 jury trials
4. Update on the UCL s28 data analysis
5. Peer review of the methodology for calculating jury conviction rates
6. Inaccurate statements made about the UCL analysis in oral evidence
7. Is s28 the best that can be done for witnesses in 2025?
8. Misunderstandings about what jury research can and cannot be done within the current law
9. Further research to understand the impact of s28 on jury decision-making
10. Data collection

1. Relevance of conviction rates to the Youth Justice and Criminal Evidence Act 1999

When Parliament enacted the Youth Justice and Criminal Evidence Act 1999, there were 3 stated objectives behind the act's introduction of "special measures" for some witnesses (including s28):

1. encourage vulnerable witnesses to report offences and give evidence;
2. reduce the stress of giving evidence for vulnerable and intimidated witnesses;
3. help secure convictions.¹

Therefore understanding how s28 (or any special measure under YJCEA) relates to conviction rates is important in order for Parliament to understand the extent to which the law it enacted is fulfilling one of its main objectives.

One position now being adopted by some commentators, including the Victims' Commissioner, is that conviction rates for s28 are not an important consideration². This cannot be correct for either Parliament or witnesses. As a stated legislative objective of the YJCEA, conviction rates in s28 cases cannot be ignored. It is also concerning to suggest that conviction rates are not important for witnesses. It should be for witnesses and not others to decide if a conviction rate is a relevant consideration for them when making the often difficult decision about whether to use special measures (such as s28) to give their evidence. In addition if conviction rates in s28 cases are unimportant, it is

¹ Home Office (1998) *Speaking Up for Justice*, London: Home Office, p.1

² See Letter to Sir Brian Leveson Chair of the Independent Review of Criminal Courts - Leveson Part 2 by the Victims Commissioner (25 September 2025) and the answer provided by Professor Hohl to Justice Select Committee member Josh Babarinde (Q12) in the evidence session on 9 September 2025.

hard to understand why MoJ asked UCL to analyse this and then felt the need to conduct its own analysis of the impact of s28 on conviction rates after the UCL analysis showed a marked drop in conviction rates when s28 was used.

2. Nature of debate around conviction rates and s28

I am concerned about the discussion around s28 and jury conviction rates, where evidence about the implementation of s28 is discounted when it does not support a particular policy.

The recent differences that have emerged over conviction rates in s28 cases highlight a long-standing problem with how outcomes in Crown Court cases are reported. Over a decade ago the independent Stern Review (into how rape complaints are handled by public authorities in England and Wales) raised concerns about the lack of agreement over calculating conviction rates. Baroness Stern pointed out then that the confusion over what constituted a conviction rate "has been to the detriment of public understanding and other important outcomes for victims"³ That Review called for dialogue, agreement and consistency in analysing and reporting conviction rates. Unfortunately, this has not happened.

Open dialogue amongst policy makers, statisticians, parliamentarians, the judiciary and legal profession about how to assess conviction rates is needed so that all groups can understand the benefits and limitations of using different approaches and ideally achieve an agreed approach. This has importance beyond the specific issue of s28. At a time when fundamental changes are being proposed to the future of Crown Court trials in England and Wales⁴, it is of great concern that there remains no agreed approach to assessing case outcomes in the Crown Court. Section 28 is just an illustration of a larger problem.

3. Comparing the UCL and MoJ analysis of outcomes in s28 jury trials

There are now two statistical studies of s28 that have produced differing results. Two such different outcomes do not provide the basis for saying s28 has no effect on conviction rates⁵. When two studies produce conflicting results, the sound scientific approach is not to simply use one study to discount the other. It is to ask a series of questions to understand what choices were made in each study. Answering these questions can help to understand why the results are different.

Question 1: Did UCL and MoJ use the same data source?

Answer: Yes

Data for the 2 studies come from the same Crown Court data. These include the reporting systems in operation in the time period 2016-2023 (ie, CREST, XHIBIT, Common Platform).

Question 2: Did UCL and MoJ use the same timeframe for the data?

Answer: No

- The UCL analysis covered the use of s28 from the start in June 2016 through June 2023.
- The MoJ analysis covered the use of s28 from January 2019 through December 2021.

My previous letter to the Committee (March 2025)⁶ set out the implications of this different timeframe in terms of the number of cases included in the two analyses. The MoJ analysis covered 2169 s28 cases. The UCL analysis covered twice as many s28 cases (4392), most of which fell within 2022-23 when s28 was in full operation in the Crown Court.

Question: Did UCL and MoJ use the same dataset?

Answer: No

Drawing on the same original data, the two studies were based on two very different datasets.

- The UCL dataset is the unmanipulated original dataset, which includes every charge against every defendant in every Crown Court case when s28 was used and when it wasn't used from 2016-2023. It identifies every charge and outcome in every case for every defendant.

³ The Stern Review A report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales (2010), p.10.

⁴ See Independent Review of the Criminal Courts: Part 1: <https://www.gov.uk/government/publications/independent-review-of-the-criminal-courts-part-1>

⁵ A claim made by the Ministry of Justice in its *Impact Evaluation of Pre-recorded Cross Examination for Vulnerable & Intimidated Witnesses*, which states that s28 can be used by witnesses "without reducing the chance of a conviction".

⁶ See <https://committees.parliament.uk/publications/47212/documents/244995/default/>

- The MOJ dataset has taken the original dataset and manipulated it to create a new dataset. This new dataset only includes information on one charge in any case from 2019-2021. This one charge is referred to as the “principal offence”, which MoJ define as the most serious offence in each case (although it is not always clear how principal offences were identified).

Question 3: Did UCL and MoJ analyse the data in the same way?

Answer: No

- UCL calculated jury conviction rates by determining the number of guilty verdicts juries returned after deliberation when s28 was used compared to when it wasn’t used in the same time period.
- MoJ calculated conviction rates by determining the number of cases when a guilty outcome occurred for the “principal offence” when s28 was and was not used in cases.

My previous letter to the Committee⁷ set out the implications of this different approach to calculating conviction rates in terms of the number of jury verdicts included in the two studies. The MoJ analysis covered only a minority of verdicts 2169 while the UCL analysis covered all 11089 jury verdicts. By taking the “principal offence” approach the MoJ study inevitably excluded the overwhelming majority of jury verdicts in all s28 cases (81%) because almost all Crown Court cases involve multiple charges, and juries most often deliberate to reach a verdict on multiple charges in each case.

It appears MoJ used the “principal offence” approach because that is the approach it has historically used for reporting official Crown Court statistics. One of the reasons the UCL Jury Project has been publishing jury conviction rates for over 15 years in cooperation with MoJ is because this information cannot be revealed by MoJ official statistics. Crown Court data MoJ has recently made available to other researchers under its Data First programme⁸ is also “principal offence” information, and Data First cautions researchers that “It is not advised to use this data to calculate conviction rate”⁹.

4. Update on UCL s28 data analysis

Following the UCL submission to the Justice Select Committee in December 2023, UCL waited to publish the full results until receiving the next data extract from MoJ which would cover all cases completed through 2023. Unfortunately MoJ was not able to provide that data until April 2025 due to a data audit. We have since discovered that a substantial amount of information is missing in the latest data we have received (covering 2023-2024). We are currently awaiting delivery of the missing data from MoJ. Once that missing data is received, a full analysis will be conducted covering all completed s28 cases from June 2016 through December 2024. This will use a range of different methodologies to show how different choices can affect results.

5. Peer review of the methodology for calculating jury conviction rates

In discussing the differing findings of the UCL and MoJ analyses of s28 data, much has been made of MoJ’s analysis being peer reviewed, while evidence given to the Committee on 9 September claimed the UCL methodology for calculating jury conviction rates was not peer reviewed. This is incorrect. The methodology used in the UCL s28 analysis is the exact same jury conviction rate methodology that has been used by the UCL Jury Project for over 15 years. This methodology has been peer-reviewed multiple times for different publications over that period. This includes peer reviews conducted by the Ministry of Justice itself¹⁰. It also includes peer reviews of UCL research for the Lammy Review¹¹ and for further research on jury conviction rates published in the Criminal Law Review.¹² It may be that recent changes in personnel at the MoJ have led to a lack of institutional knowledge about the UCL methodology and of MoJ’s own peer review of this methodology.

6. Inaccurate statements to the Committee about the UCL analysis of s28

A number of statements by other witnesses about the UCL s28 research made during the 9 September 2025 evidence session are factually incorrect and misleading.

⁷ See Table I in <https://committees.parliament.uk/publications/47212/documents/244995/default/>

⁸ See Ministry of Justice: Data First: <https://www.gov.uk/guidance/ministry-of-justice-data-first>. Also see Q17 in 9 September 2025 evidence session where Professor Hohl suggests that Data First could be used to calculate s28 conviction rates.

⁹ Ministry of Justice, *Criminal Justice System Statistics: Crown Court data tool for England and Wales*, See Explanatory Note 6.

¹⁰ See C. Thomas, *Are Juries Fair?* ((London: The Stationery Office, 2010), Ministry of Justice Research Series 1/10

¹¹ C. Thomas, “Ethnicity and the Fairness of Jury Trials in England and Wales 2006-2014” [2017] *Criminal Law Review*

¹² C. Thomas, “Juries, Rape and Sexual Offences in the Crown Court 2007–211” [2023] *Criminal Law Review* Issue 3

Evidence of Alex Wilks to the JSC 9 September 2025

Q34 Chair: *How do you account for that difference between, essentially, the Ministry's findings and those of Professor Thomas?*

Alex Wilks: *We are not exactly sure on the approach that Professor Thomas took to achieve that. She said that she was able to do that. We are not sure how she managed to do that and it has not been published, so we cannot comment on that particular fact.*

This is incorrect. As explained above (section 5), the methodology used by the UCL Jury Project to analyse jury conviction rates has been widely known, peer reviewed and published (including by MoJ itself) for more than a decade. The details of the UCL approach to the analysis of s28 were also discussed on numerous occasions with MoJ.

Q36 Pam Cox: *Without prolonging that discussion too long, I am a little concerned to hear you say that you think Professor Thomas's workings have not been shared. This is, as I understand it, also a peer-reviewed study conducted by a very respected organisation. Is it the case that her methodology is not in the public domain? I would be surprised if that was the case.*

Alex Wilks: *Not that we are aware of. We are aware that she wrote to this Committee and gave some high-level results. We are not aware that she subsequently published how she got to those, exactly.*

This is incorrect. As explained above, the methodology used by the UCL Jury Project to analyse jury conviction rates has been widely known, peer reviewed and published (including by MoJ itself) for more than a decade. This was a collaborative project with methodology discussed with MoJ in advance, at the time of the initial results and following the submission to the Justice Select Committee.

Evidence of Amy Randall to JSC 9 September 2025

Q35 Chair: *Do you not think, given that your evidence or your research has been challenged, you should do some more work on it? I take the point that perhaps not the only or even the primary reason for having section 28 is about conviction rates. There are other reasons that we have heard about today, but surely you have a curiosity about that.*

Amy Randall: *... If we had more information from Professor Thomas that showed her working, we could engage more in that discussion. At the moment we feel that that is limited, given the amount of information that we have had from her. If there was more information to digest from her, we would certainly do it and engage in that debate.*

This is incorrect. As explained above, the UCL approach to the analysis of s28 conviction rates was discussed in detail on numerous occasions with MoJ, and the methodology used by UCL to analyse jury conviction rates has been published, peer reviewed and widely accepted for over a decade. But it is positive to note from Ms Randall's evidence that MoJ is now willing to engage in discussion about how best to calculate jury conviction rates.

7. Is s28 the best that can be done for witnesses in 2025?

The Youth Justice and Criminal Evidence Act 1999 is now 26 years old, and the special measures in the YJCEA (including s28) are based on the technology available a quarter of a century ago. Audio-visual technology today is almost unrecognisable from what was in use in 1999. The Committee may wish to consider whether the approaches to pre-recorded evidence in the YJCEA remain the best that can be done for vulnerable and intimidated witnesses to enable them to give evidence.

What exists in Crown Court trials today when recordings of evidence are used under the YJCEA is:

- Poor quality police interview recordings (ABE) for a witness' evidence in chief, which are not bespoke recordings that enable the witness to tell their story directly to the jury;
- Separate, disjointed recordings shown to the jury of a witness' evidence in chief and cross-examination (s28);
- Poor equipment in court for juries to view these recordings.

New technologies exist in 2025 that may enable witnesses to give better evidence than the current approach, and research is continuing to show a number of negative effects of two-dimensional screens on human interactions.

8. Misunderstandings about what jury research can and cannot be done within the current law

During the 9 September evidence session, Committee member Linsey Farnsworth asked witnesses: ... *What research, if any, do the witnesses think should now be embarked upon within the section 28 arena? Would that include speaking to jurors? We know we cannot at the moment because of the Contempt of Court Act, but would that be useful or would that not be something that you would be looking at going forward?*¹³

Since it was introduced in the Contempt of Court Act 1981, the prohibition against obtaining, disclosing or soliciting any information about what was said or done by members of a jury in the course of their deliberations has been incorrectly claimed to prevent research with jurors. This is not true. The law prevents one specific thing: individual jurors in individual cases telling someone outside the jury what they or their fellow jurors said in their deliberating room. It has long been known and well documented that individuals often lack the ability to accurately identify the factors that influence their judgement and behaviour¹⁴. So asking jurors why they reached a verdict is not an effective way of understanding how verdicts emerge from deliberations. Other methods need to be used (see item 9 below). It is concerning that the Law Commission misunderstands this fundamental point and uses the need to understand how juries make decisions as the basis for recommending an exemption to the existing offence under section 20D of the Juries Act 1974.¹⁵

There is nothing in the current legislation that prevents asking real jurors about their experience and perceptions of a wide range of issues (including pre-recorded evidence). For over 20 years the UCL Jury Project has been conducting immediate post-verdict studies with juries covering a wide range of issues such as: perceptions of evidence and witnesses; juror understanding of the law, legal responsibilities and judicial directions. See item 9 below for details of current post-verdict studies being conducted that concern s28.

9. Further research to understand the impact of s28 on jury decision-making

The UCL Jury Project's work on s28 is only a part of a wider independently commissioned study of how special measures may affect jury decision-making¹⁶. In relation to s28 this study includes the following elements.

1. Updated jury conviction rate analysis from June 2016-December 2024 (see above)
 - Analysis of Crown Court data can show whether the use of s28 is associated with any differences in convictions rates. What it cannot show is whether the use of s28 is the reason for any differences in conviction rate. Other methods need to be used to explore cause and effect (see element 3 below).
2. Post-verdict surveys with real juries at court which explore:
 - Juror perceptions of witnesses and evidence based on whether the witness is live in-court, via live link or pre-recorded.
 - Juror perceptions of screen-based evidence (live link and pre-recorded) based on different qualities of technology used for presenting screen evidence.
3. Case simulation study with real juries at court comparing jury decision-making in the same case when identical witness evidence is:
 - all pre-recorded in separate recordings
 - all pre-recorded in a single recording
 - partially pre-recorded with a mix of recorded and live evidence
 - presented via different technologies and different qualities of delivery

¹³ Q17, Justice Select Committee evidence session, 9 September 2025

¹⁴ R. Nisbett and T. DeCamp Wilson (1977) "Telling More than We Can Know: Verbal Reports on Mental Processes". 84 *Psychology Review* 231

¹⁵ Law Commission, Evidence in sexual offences prosecutions: a final report (2025) Paragraph 10.200 and Recommendation 61.

¹⁶ See <https://www.nuffieldfoundation.org/project/juries-the-digital-courtroom-and-special-measures>

10. Data collection

Finally, the Committee raised a number of queries about data collection with the MoJ in the 9 September session. In my original submission to the Committee I highlighted a number of areas where data collection in Crown Court s28 cases needed to be improved. See section 2.12 of the submission at: <https://committees.parliament.uk/writtenevidence/126988/pdf/>

I hope this further information is helpful to the Committee. If you have any further questions I would be very happy to answer these.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Cheryl Thomas', with a stylized flourish at the end.

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