

Justice Select Committee: Inquiry into Court Capacity, the Impact of Delay and how it can be Managed

Written evidence from the Victims' Commissioner for England and Wales

Dame Vera Baird QC

Practical experience of delay in Crown and other courts among lawyers, witnesses, victims and defendants and whether there is appropriate access to justice.

Introduction

Thank you for the opportunity to offer a contribution to your inquiry into court capacity and the practical experience of the current delays in Crown and other courts among lawyers, witnesses, victims and defendants and whether there is appropriate access to justice.

As Victims' Commissioner for England and Wales, my statutory duties require me to "...promote the interests of victims and witnesses" and "...take such steps as she considers appropriate with a view to encouraging good practice in the treatment of victims and witnesses". That is the capacity in which the contribution is sent and clearly my focus is on the impact of delay on victims and witnesses.

In my capacity as Victims' Commissioner, I have taken a close interest in the recovery of the courts following lockdown, including the backlog of cases, future capacity, and most importantly, the impact these have had on victims and witnesses.

When lockdown began, I established regular calls with the Police and Crime Commissioner funded Victims Hubs from all parts of the country. They are responsible for providing frontline local victim support services. This has enabled me to build a picture of how victims were coping with the pressures of social distancing and lockdown, the "hidden harms" this was creating and more recently, the impact of court recovery and delays.

At the start of the court recovery process, I requested that I sit on all the judicial led groups overseeing the recovery of the courts so that the victims and witness interest would be fully represented throughout. There appeared to be no appreciation as to the need for this and it took until mid-June before the powers that be determined I should sit on all of them, though their work had been in progress since April. I am now a member of the Jury Trials working group (chaired by Edis J) and its Victims and Witnesses sub group (chaired by McGowan J) and the of the Magistrates' Courts recovery group (chaired by Lady Emma Arbuthnot) and the group considering extended court opening hours (Chaired by HH Judge Mennary).

In addition, I attend fortnightly MoJ Sliver Command Group meetings. This is a forum bringing together helpline providers and key victims' charities, with some service deliverers such as HMCTS, Police and CPS, looking at the issues arising from lockdown and the impact on victims. Together with the Commissioners for Domestic Abuse (Nicole Jacobs), for Children, (Anne Longfield) for Modern Slavery (Dame Sara Thornton) I contributed to the Prime Minister's Hidden Harms Summit held in June. The Commissioners, together, wrote a chapter of the action plan arising from the summit.

As is the case in more ordinary times, I also have regular exchanges with many victims and steady engagement with third sector organisations responsible for delivering support services for victims of crime.

Broadly, my issues of concern can be set out in six categories:

1. *Current CJS engagement with victims and witnesses*
2. *The impact/potential impact of delay*
3. *Particular issues for vulnerable victims and witnesses*
4. *Steps to lessen the impact of 2 and obstacles to achieving them*
5. *Concerns about the impact on victims of a miscellany of steps being taken by agencies to reduce the backlog*
6. *Broader thinking – A systematic approach to the current situation, engaging with restorative justice, better framework for OOCs, early consultation with victims and witnesses on pleas to lesser offences and promotion of the police and CPS victim review schemes*

Current engagement with victims and witnesses in the reduced criminal court system

As the Committee will be aware, there was a backlog of approximately 37000 cases in the Crown Court before Covid-19 and lockdown. Time taken for cases to reach court has been steadily growing in the past five years, which meant many victims and witnesses were experiencing lengthy delays in their case getting to court.

For the first time in around seven years, the ONS data on victims and witnesses, which is collected for the Crime Survey for England and Wales, was analysed this year by the Office of the Victims' Commissioner. Additionally, my office conducted an online survey to inform our submission to the Government Consultation on the Victims Code. The latter responders were self-selecting but features of both pieces of research indicated a serious fall in confidence in the criminal justice system prior to Covid-19.

For example, according to the Crime Survey for England and Wales, satisfaction with CJS agencies amongst victims who had had contact with the system decreased from 70% in 2014-15 to 64% in 2018-19.¹ In our victims' survey, only 42% of respondents said that based on their experience they would report a crime again.² Comments suggested this was linked to long investigation time with limited contact from CJS professionals.

We also know that victims of some of the most intimate and serious offences are increasingly likely to withdraw their support for the investigation or prosecution: in 2016, 35% of domestic-abuse flagged cases ended because the victim did not support the action, and by March 2019 this figure was 53%.³ The figures for rape were 25% in and 41% between year

¹ Victims Commissioner (2020) Victims statistics. Available at: https://s3-eu-west-2.amazonaws.com/victcomm2-prod-storage-119w3o4kq2z48/uploads/2020/03/OVC_Victims-stats-2020.pdf

² Victims' Commissioner, *Victims' experiences of criminal justice system revealed in new research* (29 May, 2020): <https://victimscommissioner.org.uk/news/victims-experiences-of-criminal-justice-system-revealed-in-new-research/>.

³ Table 10: Outcomes assigned to domestic abuse-related offences recorded in the year ending March 2016, by outcome type and group. ONS (2016) Domestic abuse in England and Wales – Appendix tables. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseinenglandandwalesappendixtables>. Table 6: Outcomes assigned to domestic abuse-related crimes and non-domestic abuse-

ending 2016 and 2020.⁴ With delays increasing, we feel such victim attrition is only likely to get worse.

Overall, our impression is that victims report a crime because of their distress and in pursuit of justice and witnesses are prepared to testify in pursuit of their public duty; both are becoming increasingly disillusioned by the process and are withdrawing support.

The impact/potential impact of delay

The Lord Chief Justice (LCJ) estimated that the trial backlog was increasing at a rate of 1000 trials a week when testifying to this Committee on its last inquiry.

Others can provide the Committee with data, but we understand from HMCTS that approximately 120-130 trials are currently taking place every week. Such progress is welcome but has only begun recently. The number of courts still to be fitted with plexiglass screens or otherwise to be brought into use for trials in the near future is estimated by HMCTS to bring the total number of courtrooms in operation to approximately 250. If this is achieved, it seems likely that the number of trials which can *potentially* be heard weekly may equal or slightly exceed the numbers being heard before Covid-19. However, it is widely reported that there are insufficient HMCTS staff for this level of court use, although we understand recruitment is underway.

There are plans for more Nightingale Courts, and these will provide more court space but are unlikely to have custody facilities. There are pilots in five or six courts of what are called Covid-19 hours, whereby the court day is split between two shifts, with different cases progressing in each shift. HMCTS have some faith in this as the way to find more court time and it is said that 4500 extra sitting days have already been allocated and an impression is created that more days can follow if needed.

What cases are considered as ‘in the backlog’ is not wholly clear to me. For instance, one study to be published shortly (of which I have had a preview) will suggest that cases which are not listed are not counted in the backlog and thus cases which have been sent to the Crown Court from the Magistrates are not represented in the backlog either. The Magistrates Courts are said to be almost back to normal and therefore will be sending cases to the Crown Court at levels which must, currently, well exceed what it can deal with.

related crimes recorded in the year ending March 2019. ONS (2019) Domestic abuse and the criminal justice system – Appendix tables. Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/domesticabuseandthecriminaljusticesystemappendixtables>.

⁴ Table 2.2: Outcomes assigned to offences recorded in the year ending March 2016, by outcome group and offence group. Home Office (2016) Crime outcomes in England and Wales: year ending March 2016. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/539447/crime-outcomes-hosb0616.pdf. Home Office (2020) Crime outcomes in England and Wales 2019 to 20 Table 2.2: Outcomes assigned to offences recorded in the year ending March 2020, by outcome group and offence group, England and Wales. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901028/crime-outcomes-1920-hosb1720.pdf. Also, The Guardian (23 Jan 2020) Domestic abuse cases abandoned too quickly when victims retreat – study. Available at: <https://www.theguardian.com/society/2020/jan/23/domestic-abuse-cases-abandoned-too-quickly-when-victims-retreat-study>

Clearly, HMCTS are working hard and have made impressive progress and are obviously attempting to optimise court space, personnel and court time.

My office will be publishing a research report in mid-October 2020 about the experience of rape survivors with the criminal justice system. In our survey, we asked survivors about the importance of different factors in withdrawing support for an investigation or prosecution: three out of ten survivors said that delays in police processing were important or very important factors in their decision.

Nor can we assume that after Covid-19, crime trends and detection rates will return to what they were before lockdown. Time does not stand still. The government is in the process of recruiting an additional 20,000 police officers and the Institute for Government has issued a paper showing how extra police capacity will increase the number of criminal charges brought day by day. It also highlights the pressures on courts:

“At the same time, the coronavirus lockdown has seen courtrooms closed for all but a small number of priority cases and jury trials are suspended altogether. This research shows that waiting times to hear cases could increase by more than 70% in the event of a six-month lockdown, with many defendants and victims forced to wait more than half a year for trials in the crown court.

“This would result in the highest average waiting time ever recorded. To resolve this case backlog, the report calculates that the government would need to spend an extra £55m–110m a year for two years to run the necessary extra trials.”⁵

The economic fallout of Covid-19 is likely to bring higher unemployment, which can usually be expected to bring about an increase in crime.

All of these factors need to feed into planning assumptions for future court workloads and backlogs.

Particular issues for vulnerable/intimidated victims as witnesses

The judiciary, with responsibility for listing cases, seem intent on prioritising certain cases. While custody time limits are a priority, that issue may have receded somewhat with the recent lengthening of the initial period available for remand in custody. The second/perhaps equal priority is cases in which there is one or more vulnerable or intimidated victim/witnesses. I welcome their intention to prioritise such cases, but it is unclear whether it is succeeding and there seems little data to support evaluating that question.

CPS made a valiant and much appreciated effort to quantify, by Crown Court centre, the number of cases in the backlog which involve vulnerable/intimidated witnesses. However, they withdrew the spreadsheet shortly afterwards and we are unaware of any substituted estimates, nor are we aware of any other criminal justice agency who hold this information centrally.

⁵ Institute of Government (2020) Coronavirus outbreak could mean record waiting times for justice. Available at: <https://www.instituteforgovernment.org.uk/publications/criminal-justice-system>

When cases arrive at the listing process in the Crown Court, they will be accompanied by an MG3 if there is a witness who qualifies for Special Measures. This means that even if there is insufficient national data, there should be local information from which these cases can be identified and prioritised for listing.

I would like all Crown Court centres to be tasked by HMCTS to produce this data at a local level, not least of all, to reassure people that they are getting priority. There are reports from frontline victims organisations that prioritisation is not being universally accomplished and that vulnerable and intimidated victims are being summoned to court only to be sent away again with a short return date and sometimes sent away a second and even a third time. It is to be hoped that the determination not to list rape and sexual offence cases as floaters or backup cases is not being weakened by current circumstances because some reports have featured that category of case. We have attached a sample of such cases from our latest Victims Hub call on October 5th in the Annex to this response (*Annex: Feedback and Case Studies from Victim Support ISVAs, IDVA's and IVA*).

Custody Time Limits

A real issue of concern to victims and the wider public is the courts having to release potentially high-risk offenders as they have reached current custody time limits. The government has responded to recent refusals by judges to do so by extending custody time limits by two months from approximately 6 months to 8 months. This may be an expedient measure, but like many others, it is not one I feel comfortable with. The real answer to this concern is to build court capacity so that we are not holding suspects in remand for excessive periods of time.

Special Measures

Delay is not the only issue which is undermining victim and witness engagement with the justice process. The need to put in place social distancing measures within the court room, still required in many crown court centres where plexiglass screening is not yet in place, is impacting on the delivery of special measures.

Special measures are designed to help victims and witnesses to give the best quality evidence they can. They include in-court screens to shield them from the defendant; using a live link to testify outside the courtroom but in the same building, remote evidence centres which are completely separate from the court (but which are rarely used and should be – see section 4 below) allowing evidence to be pre-recorded (S28 – see difficulties in section 4 below) ; and using trained communications specialists to help witnesses while giving evidence. Clearing the public gallery and lawyers removing robes are both options available but are, for no known reason, rarely used.

Some victims, including those of the most serious sexual offences including rape, are being forced to come face to face with defendants because courts are not set up to provide them with the protections they are legally entitled to while giving evidence. In some cases, such victims have not been correctly identified as vulnerable ahead of the trial and have no idea they are entitled to special measures.

Again, my concerns about this preceded Covid-19 and has prompted me to launch an in-depth piece of research into the provision of special measures. My report will be published later this year.

However, this situation has undoubtedly been exacerbated as courts deal with the challenge of adhering to social distancing regulations introduced as a result of the Coronavirus.

Examples of Special measures not being delivered

On two occasions in August, complainants attended two different crown courts, in each case to find that the in-court screening which they had been promised was not available. The problem arose because the jury needed to be spread around the courtroom for social distancing and two jurors were to sit in front of the dock. This meant that the in-court screen designed to block the complainant from the defendant could not be used because it would simultaneously block the complainant from these jurors. To arrive at court to give deeply personal and detailed account of how a high harm crime was committed is a hard task to contemplate and people speak of losing sleep for weeks beforehand. For many, it is a reassurance that they are guaranteed the defendant will not be able to see them nor 'eyeball' them during the trial. To then find that the guaranteed screen is not available is a serious blow. In one of the cases the judge spoke to the complainant who agreed to testify in open court, in the other the judge arranged for brown paper to be stuck to the dock to stop the defendants view. I think it is now appreciated that where there is a problem of this kind it should be seen in advance and less formal contact made with the complainant to ascertain what alternative s/he thinks is best. Neither is it desirable a judge deal with this since there is a power-imbalance which cannot be easily redressed, and which can be persuasive to the complainant. The same problem with in-court screens has happened since, according to victims' services, with an assumption that a live-link is an easy alternative. See s4 for problems which limit the use of live link. It is imperative for the courts to appreciate that the complainant needs a voice in what special measures will help best.

A different example during lockdown was a female complainant determined to testify face to face with the defendant, but the trial was in another city and due shortly. At that time public transport was to be avoided if possible but the trial judge ordered the case on with the complainant to testify via live link from her local Crown Court. She refused to do so, and there were concerns the case would be dropped until local victims' services advocated on her behalf. They obtained a medical report to say it was a fundamental part of the complainant's recovery to tell her story with the defendant present. The judge finally agreed to stand the case out, but there had been 3 hearings to get that result. This seems a further example of courts thinking that any special measure will do.

My report will look at all these issues and many more, but it is important the Committee seizes this issue, in the current context, since it can make powerful recommendations.

Steps to take to somewhat ameliorate the impact of 2 and obstacles to achieving them

Maximising the Use of Remote Evidence Centres (RECs) as a Special Measure

Even in ordinary circumstances, complainants, especially in high harm cases, often express profound concerns about attending court. Special Measures can help but do not remove the anxiety of meeting the defendant or his associates around the building. (Although CJS officials do take steps where possible to minimise this risk, there are frequent reports of it happening) Nor do Special Measures remove the potentially intimidating effect of the court's formality with its populations of robed lawyers and uniformed police officers.

One option is to be allowed to give evidence from a remote site, and some years ago the Home Office funded PCCs to set up a chain of remote evidence centres across the country. They are in SARCS and other charity buildings and in anonymous but safe other places. In Northumbria, for instance there are two in SARCS, one in rural Northumberland (to save excessive travel to court) and one in a city residential area. Many are comfortable and informally laid out. They offer opportunities. For instance, a young woman whose family had disowned her because of her allegations of sex abuse against a relative was given the confidence to testify by bringing her pet dog with her to the REC.

Now, when victims and witnesses are likely also to have Covid-19 related concerns about entering busy public buildings and professionals are worried about increasing footfall as jury trials widely resume, the use of RECs has particular promise

However, RECs have been chronically under-used. They do not always feature as an option, even where they are readily available, on the MG3 forms which are the means by which police, whose role it is to identify vulnerable and intimidated complainants, tick a box to request appropriate Special Measures. The MG forms need to be updated to ensure they reflect the availability of RECs.

Five months ago, I raised the issue at a number of the groups I attend and in response to some interest, in May, wrote to PCCs for data about RECs

Of the 38 Police and Crime Commissioners who responded, 17 have remote evidence centres, with a total of 27 centres across England and Wales. 15 of these centres were described as available but used infrequently.

I also asked the reasons for their under-use and feedback suggests unexplained resistance on the part of local judiciary, or HMCTS managers concerns about staffing them. (An usher would be required during a case, to pass exhibits etc.) It is impossible that HMCTS did not know that such resources existed, but they did not have a full record of these RECs and welcomed the excel spreadsheet by which we supplied them with detailed information.

It continues to be perplexing why these RECS have in the past been paid for by government investment, modelled by local PCCs and police and left to lie unused. Even now, with the extra barriers presented during Covid-19, they are not being offered or explained to

vulnerable complainants, for some of whom, it is obvious they may offer a potentially attractive option

In the past week, HMCTS have reported that they have established a protocol for the use of remote evidence centres and intend to start a campaign to promote their use shortly. There is no detail currently available to me about what has been agreed, with whom and about which RECs.

As I have already stated, victims are withdrawing their support for prosecutions in huge numbers. Anything that can improve their security and ease and assure them that their interests are being carefully considered at the heart of the system should surely be brought fully into use as a matter of urgency. It is important to promote their value and their use with Witness Care Units, CPS and through PCC funded victims' hubs with vulnerable and intimidated victims. They are an important addition to the range of options which should and can be offered.

Section 28 Youth Justice and Criminal Evidence Act

Section 28 allows a vulnerable complainant to give their account of what happened on video (called an Achieving Best Evidence interview – an ABE) The ABE video is served on the defence and a preliminary hearing will fix a date/ make by which they will be able to cross examine. The cross examination is videoed too, with counsel and the judge in court (no jury) across a live link to the complainant. The two videos then become the totality of the complainant's evidence. The complainant does not have to attend court. They have given their evidence on video and are free to leave the case entirely. It will be tried, at some time in the future by playing the videos in sequence to the jury. This reduces the effect on the complainant of the huge delays due to the current backlog and, in particular, means that child complainants will not have to spend years with the shadow of giving evidence hanging over them.

Section 28 should be urgently rolled out nationwide and its use optimised for vulnerable complainants so that they do not become re-victimised by court delays. This has begun but there is more to do. In 2019/20, 40% of sexual offences prosecutions involved child victims (there were 10,523 completed prosecutions of sexual offences in 2019/20, and, of those, 4,226 completed prosecutions were of child abuse flagged sexual offences⁶). This suggests there are likely to be at least around 4,000 cases which are eligible for s28 in a given year.

From the start of the court recovery programme, I pressed, wherever I could, for Section 28 to be rolled out nationally and its use optimised urgently to help save vulnerable complainants from long delay.

HMCTS staff were responsive. They tell me that the courts have all been wired up for S28 use since 2019 but the Statutory Instruments have not been in place to allow its use beyond a

⁶ Table 2.1: England & Wales – CPS Prosecutions by Principal Offence. CPS (2020) Prosecutions Quarterly Reports Year Ending March 2020. Available at:

<https://www.cps.gov.uk/sites/default/files/documents/publications/Prosecutions-Quarterly-Reports-Year-Ending-March-2020.xlsx>

Table AR8: Prosecutions – Child Abuse Flagged Sexual Offences. CPS (2020) Violence Against Women and Girls Annual Data Tables year ending March 2020. Available at:

<https://www.cps.gov.uk/sites/default/files/documents/publications/VAWG-Annual-Data-Tables-Year-Ending-March-2020.xlsx>

handful of courts. Although it has taken months, a further tranche of courts has now been enabled (and staff have been trained) to do S28 and it is intended that S28 will be rolled out nationwide by November.

Nevertheless, it feels as if we are taking small and slow steps forward and this is frustrating. There are two more steps to take to secure even this progress.

Firstly, police must carry out ABEs. (instead of handwriting statements). Guidance was issued to forces at the beginning of lockdown which led to a belief ABEs were only to be done, during lockdown in exceptional circumstances. Feedback during the summer was that very few ABEs were being done. The NPCC lead for victims and witnesses revised the guidance and after a time, feedback improved. This was a lost opportunity. Police guidance needs strengthening to make clear that it is a national priority fully to use S28 to help to take the vulnerable out of the backlog and that requires a consistent flow of well-done ABE interviews.

Evidence from the London Rape Review found that victims were six times less likely to withdraw support for a complaint if they had participated in a video recorded interview.⁷

Secondly, a practical, operational issue which looks easy to remedy, is impeding optimal use of S28 and undermining Special Measures provision in some cases. I explain the point most readily by describing its impact on Special Measures first and then on S28.

The most frequently used Special Measures are a physical screen round the witness box or the use of a live-link. The second is where a complainant testifies from a room, outside the courtroom but within the building, and their evidence is transmitted in the courtroom on a TV screen.

A long-term issue with live links is that when complainants realise (usually on the court familiarisation visit) that they will be visible, on a TV screen in court, to the defendant and the public (which may include family or associates of the defendant) they decline using a live link. Police officers tell me that this is very common, even when complainants have opted for a live link in the first place and it would be their first choice. This week a report from police Witness Care Units confirmed that this concern was operating as a barrier to the use of live links now.

Some courts have understood this and are able to ‘screen the screens’. That is the case in Newcastle Crown Court. Early in October, a judge in Sheffield, organised boarding to screen the TV screens during a particular trial in his court.

However, without this being grasped as a systemic issue, it will not be fully tackled, and vulnerable complainants may be denied their special measure of choice. I have raised this at three different ‘court re-building groups’

It is made more urgent by Covid-19 conditions when there are sometimes no other options for Special Measures. As mentioned above, in some courts, jurors are spread around the room to socially distance and some have to sit in front of the dock so that physical screens won’t work. If that is the case and the complainant won’t use the live link, as described above, an

⁷ MOPAC (2019) The London Rape Review: A review of cases from 2016. Available: https://www.london.gov.uk/sites/default/files/london_rape_review_final_report_31.7.19.pdf

adjournment may be the only option. This is not a good reason for adjourning cases involving vulnerable complainants.

The same concern is expressed by complainants offered the use of S28 who similarly don't want themselves on video to be visible on screen in court to the defendant and the public. HMCTS have set up a stakeholder group to support the s28 national rollout. It met last week and when I raised this issue, HMCTS officials acknowledged that there were already refusals of S28 for this very reason and this seems likely substantially to undermine some of the excellent work that HMCTS has done.

Clearly the identical concern will impede the use of RECs by complainants when/if they are brought into more use, since they too will be visible in court, on screen, to all

This issue just does not seem to have been grasped, by local court management of central HMCTS. Testifying from behind a physical screen in court is not only to save the complainant from eye contact with the defendant, but in some cases, especially of non-recent sexual abuse, to prevent him from knowing what she looks like now. It is also to give some privacy for someone testifying about sometimes awful or intimate events. Obviously, the latter two purposes are not achieved if on-screen exposure in court is not limited to those who must see the complainant.

We do not believe there is a clear-cut place on the MG3 form to request that the TV screens be screened. The sensible approach would be a default position that in-court TV screens are screened from all but those who must see them, leaving the complainant to opt out.

It ought to be simple for this issue to be overcome.

Intimidated witnesses

With the backlog in mind, it is important urgently to consider the rollout of S28 to include intimidated victims and witnesses. The intimidated cohort is not, of course, confined to those who are involved in gangland type trials. Invariably, it is complainants where the prospect of testifying with the defendant present and, indeed, testifying at all about intimate high harm matters, is intimidating.

Special measures are similarly available for this cohort, but despite the intention in the Youth Justice and Criminal Evidence Act 1999 that they should be protected via S28, that has not happened. There have been pilots of its use for over a year in the 3 Crown Courts where the vulnerable witness pilots were held, and it is urgent to evaluate those pilots. If they are successful, all courts nationally are now licensed to take evidence under S28 and so rollout should follow as speedily as possible. This is all the more critical for the intimidated cohort given the especially high drop out rate in sex offence cases and given that senior police and CPS prosecutors are both noting cases being listed as late as Autumn 2022.

Listing

Victims get frustrated at building themselves up to give evidence, only to find their case has been double listed and they are being stood down at the last minute.

One local victims' hub shared their experiences with me recently. From the first day of courts reopening, the team offered support to all victims of domestic abuse going through

magistrates and Crown Court. Domestic abuse cases were slowly flowing through magistrates' courts, but they were regularly seeing cases being adjourned; sometimes for the 3rd or 4th time. This had a hugely negative impact on clients; it was not only hard for the team to ensure victims remains engaged with the court process, but it also affected the victim's well-being and mental health. The majority were extremely upset and distressed, as they were hoping to have their day in court, closure and a chance to move forward with their lives. For many, these offences happened so many months ago.

The team concluded that in some cases, this was resulting in retracted statements and victim disengagement, as victims felt they could not continue with the wait and needed to move on.

Again, this requires the courts and the CPS to identify cases involving the vulnerable and intimidated and these cases need to be given listing priority. The anecdotal evidence is that this is not happening.

Victim Support Services

Victim support services, particularly those looking after vulnerable victims, are increasingly stretched as they are having to provide support for significantly longer periods of time as victims wait for cases to get to court. This is resulting, for example, in victims of sexual assault, having to wait before they can be allocated an Independent Sexual Violence Advisor".

For example, Northumbria has been forced to cap ISVA caseloads at 60, compared to a national recommendation of no higher than 50. There is a waiting list approaching 70 people for referrals for rape. This is because ISVAs remain with their cases until the trial is over. In Avon and Somerset, the ISVA and IDVA services are struggling: Short term funding from MoJ is helping but extending the spending past October is not hugely helpful. There is concern about how they will cope when funding ends and the need is more money, rather than an extension on spending it. And there is a further concern that MoJ is changing its requirements for funding data, adding extra work at the same time that charities are inundated with clients who have high welfare needs and staff and charities are under great pressure.

Many victim support services are reporting that their caseloads were the highest they have been for many years. Since May, they have inevitably seen increases in referrals across all crime types. They are reporting big increases in domestic abuse and anti-social behaviour referrals and since the summer, big increases in hate crime referrals too. Sexual violence incidents have increased.

Engagement levels with victims were also very high and this is partly attributed to concerns around social distancing and lockdown. It means cases are taking longer to deal with, resulting in delays in dealing with victims.

I am not suggesting court backlogs alone are the cause of the growing pressure in victim services, but clearly, they are a factor. As the court backlog rises, it is inevitable that victim services caseloads will rise too. The point is all of these factors will reverberate onto the quality of support available to sustain vulnerable and intimidated witnesses so that they do attend court.

Plea Bargains, Out of Court Disposals, decisions to take No Further Action, deductions of 10% from sentences and other apparently miscellaneous and random endeavours by various criminal justice agencies to speed cases out of the backlog

A report shortly to be published calculates that this kind of outcome has increased by more than 25% since the courts re-started post lockdown. There is no doubt from police and victims' services that they have significantly increased and there are complaints victims are not being consulted as they should be, before such decisions are taken

It has to be reiterated that there was a huge backlog caused by gross and long term underfunding prior to Covid-19 and it would not be appropriate for criminal justice agencies to take risks with justice and the ability of victims to cope and recover from what has happened to them in order to find any means at all of cutting the backlog.

The appropriate course is to invest and restore the courts to their optimum. Pressure to resolve cases quickly can result in unacceptable outcomes. We are only too aware of the exasperation arising from finding the CPS has accepted a plea bargain, resulting in offenders pleading guilty to lesser offences falling well short of representing the impact of the crime.

In some instances, where cases are dealt with out of court, either by an out of court disposal or by a determination of no further action, victims only get to hear their case is at an end long afterwards.

We are aware that CPS have changed the public interest test to allow the situation in the courts to be taken into account when considering whether to charge or whether to continue a case which may have been judged to be in the public interest prior to Covid-19. This is understandable.

However, it has long been recognised that victims have an enhanced interest over that of the public in offences committed against them. Crimes can, of course impact individuals anywhere on a continuum between inconvenience and life-changing trauma. Lifting the public interest test so that an unusually high level of public importance is required for a prosecution surely requires that the individual who has been affected is consulted. This must particularly be so when charges have been laid and a contrary decision is made not to proceed to trial is made as a consequence of the new Covid-19 linked test. It is not suggested the victim's views should be determinative, but they should be seriously taken into account and recognition thus given to the potential importance of such decisions on victims' recovery/future wellbeing.

It would be desirable for a transparent matrix of factors which will be balanced in this decision-making to be made public so that it can be understood by victims. There has been more clarity about the police guidance on out of court disposals. There are clear requirements to consult the victim and sample OOCs are usually scrutinised by a panel as an assurance that the system is working according to the guidance. However, similar arguments to the above apply to the regard owed to victims in individual cases where there has been any level of harm

Clearly the increase in use of these kinds of disposal, by anecdote, done in a wholesale way putting priority if not total focus on cutting the backlog is to increase the dissatisfaction already set out already causing numbers of victims to give up on justice. This loss of public

confidence in our justice system is serious and will have long term consequences in getting the public to engage with the justice process. Every example of disregard to a victim at this time will reverberate in this way in the future

Reductions in sentence to compensate for Covid-19 related hardships in prison such as lack of visitors and risk of solitary confinement are understandable. This was covered in The Times (front page, Monday 5 October), who listed some specific examples:

Judges have been handing down shorter sentences since April when the Court of Appeal ruled that the effect of coronavirus measures, such as prolonged cell confinement and visitor restrictions, could be taken into account in the sentencing of a man who sexually abused a schoolgirl.

Since then criminals have routinely had their sentences reduced. Last Friday a gang of Romanian burglars who carried out 12 raids and targeted irreplaceable antiquarian books were given 10 per cent discounts on their sentences.

In April Paul Reed, 30, who had 27 previous convictions, received a lower sentence for assaulting his former partner. Last month two balaclava-wearing burglars who terrorised a family at their home on Teesside were given sentences that took into account that they would have to spend 23 hours a day in a cell.

In July a sex offender who was caught online trying to groom an under-age girl was jailed for 20 months, a reduction because of the Covid-19 prison regime and his guilty plea.

The Committee will have little influence on the judiciary and there is a Court of Appeal Criminal Division precedent, but it is possible for you to make recommendations as to alternative ways to achieve similar outcomes. If it is still necessary to avoid Covid-19 outbreaks in prison by cutting the number of prisoners, there was a proposal for a fully risk assessed early release scheme which was abandoned but at least ensured that only offenders who were non-violent and not convicted of sexual offending were eligible for a sentence discount of that kind. Victims will be more concerned about an across-the-board discount on all sentences that might appear to be happening from now.

Broader thinking & a systematic approach: restorative justice, better framework for OOCs, system of consultation on plea bargains, enhancement of the VRR

There is much good work underway to build capacity in the restarted court system using innovation and adaptation - for example the installation of Perspex screens, portacabins in carparks for jury retiring rooms, nightingale courts and piloting options for extending court opening hours, but all of these efforts need to be ramped up.

The government should adapt as many courts as necessary, for example, opening up those that have been closed in recent years where practical and exploring other buildings for court use. It is imperative to provide the money for judges to occupy them. Increasing the number of sitting days is crucial.

It is also important HMCTS engage closely with their criminal justice partners at a local level, including victims' services. By sharing information, the courts will establish a better

idea of vulnerability and support workers will be able to share information and updates with their clients. Whilst eliminating the backlog is central to improving victim engagement, regular contact and updates is also an essential ingredient to keeping them on board and on side.

All of this together is unlikely to reduce the backlog sufficiently. Its reduction will be cut across by the advent of the promised 20,000 police officers replacing those lost during austerity, which will increase the number of charges requiring the attention of the court. There is also a serious concern that unemployment brought about by the continuing impact of Covid-19 on the economy will increase crime, since there has been that coincidence in the past

This may be an opportunity to re-engage with out of court solutions which may offer the chance of justice to which will not otherwise be achieved. Restorative justice (RJ) has been available and can bring satisfying results to victims and defendants, but it has usually functioned at the end of the case when there has already been a sentence. Levels of participation in RJ are not high since by that stage many participants will, in their diverse ways, have been moved on

The government should give serious consideration to a major initiative to take this to another level, if the upturn in OOCs and NFAs to continue as part of cutting the backlog. At least let those outcomes be considered in a systematic way, with in that framework. There is research to show that victims, who are our primary concern can find RJ satisfying and beneficial bringing a sense both of closure and of justice. We would ask the committee to consider that this would be a better outcome.

Further, out of court disposals can have a similar effect if they are explained and discussed with the victim, but this requires the establishment of a more detailed and transparent set of criteria and more engagement with the parties. The aim should shift from an easy outcome for police and a saving for the courts to one which acknowledges the need for appropriate mutuality in delivering justice.

CPS need urgently to adapt to a more victim-centred approach to the consideration of plea bargains, acknowledging the importance for coping and recovery of decisions of this kind and the sense of disregard and neglect which can impede that process if insufficient care is given to victims.

In the current atmosphere, it is imperative that the victims right to review (VRR) both police and CPS decisions which terminate a case are promoted widely as non-court disposals proliferate. There is a Court of Appeal Criminal Division precedent allowing a victim the opportunity to make representations on a VRR, so that it is no longer a case of asking for a review but being unable to influence its outcome. It is essential that victims are informed of that capability especially in the current context where Covid-19 related forces may be encouraging the more frequent abandonment of charges and prosecutions

Conclusion

The crisis facing our courts will have reverberations across the criminal justice system. It is important the government is bold and swift in making sure the backlog of cases is tackled

effectively. In doing so, they must make sure agencies engage with victims and witnesses and keep them on side.

Annex: Feedback and Case Studies from Victim Support ISVAs, IDVA's and IVA

Feedback and Case Studies from Victim Support ISVAs, IDVA's and IVA's showing the Impact of CV19 – October 2020

Case 1

Original trial date set for 14th April Crown court – Cancelled at the beginning of April due to COVID – Client told they are hoping for a June date. Client frustrated and disappointed as the trial is hanging over his head and he wants to move on from this terrible experience and get on with his life. 16th June Client told the trial will hopefully be in July but no confirmed date.

Client was contacted on the 23rd June and asked if he could attend court later that week. Client said it was too short notice for then but he could prepare to attend the following week. Client feeling very anxious with all the uncertainty around when the case will be heard. Client said not knowing when he has to attend has made him feel very unsettled and anxious.

Client was contacted on the 25th June by the Witness Care Unit and told his court date would probably be in the next two weeks. On the 1st July he was contacted and told they had to attend the next day and possibly the following day – very short notice and not long to get their head around attending court and preparing.

Positive: The Crown court was very well organised in terms of social distancing and guidance through the court areas. Witness Service were very reassuring whilst in court.

Case 2

Murder trial was postponed in July 2020 due to Covid 19 and set for February 2021 but no date confirmed as yet. Her anxiety levels are raised because she believes police and WCU are forcing her into giving evidence.

Initial concerns are that client has anxiety issues around what she witnessed and potential appearance at court. Police are calling her a lot. We tried to reassure her by explaining that she will be offered support before and during the trial. Just before the trial she can discuss special measures with WCU, extra support and may even be able to give evidence from a different place. She did not want to discuss this and feels that she is not ready to deal with that yet and it would just serve to raise her anxiety levels.

Case 3

Client had a call from Witness Care Unit on 24 March to say custody had been extended and was due to be discussed again on 14 April (this was supposed to be the trial date). This was put off until 10 August and then again until 7 September. Client said he is worried about the case and not knowing when his case will be heard is making him feel very stressed. Client said it is dragging on and he wants it to be over.

Case 4

Crime was committed in early April 2020 and court hearing scheduled for 4 September 2020. Client stated that he just wants to move on and can't due to the pending court case. Client feels he can only get closure once the case is closed.

Case 5

Client said that they attended court on the 24 March 2020 for the start of the court case but the Crown Court was evacuated except for the witnesses who were kept in a separate room - socially distancing. Everybody else was removed from the court and were sent outside whilst they decided whether or not to close the court.

Client said the alleged perpetrator did not show so their case did not go ahead but she did not know if the case would have been heard that day had he showed up due to COVID.

Client said that since then there have been 3 hearings to set a date - all of which have not gone ahead.

Client will find out today if a new date will be set or if it will be adjourned again. Client said Witness care Unit has been great and kept them informed of updates but it is frustrating and should be over by now. Client said this has been hanging over our heads for a year now. The delays with setting a new court date do not help. Client said at least if she knows a date she can put the court case to the back of her mind until nearer the time.

Case 6

Client is one of many witnesses, she reported in 2018, and trial was set for February 2020. However on the day of the trial, one of the witnesses was not well, so it was adjourned until the next day, but then the judge was not well, so rather than pass this trial onto another judge (even though the trial had not started yet) the judge adjourned it until August 2020.

The client was distraught as she did not want to go ahead with it as it was, but has been told she has to as her statement is central to the case. The client has other issues happening in her life that are contributing to her not coping as well as the looming trial, however she did not feel she could cope any longer and attempted to take her own life last week.

This case was relisted for August and was discussed with the RASSO CPS lead and who was informed (with client's consent) about the impact and how she had tried to take her life. VS was assured it would be prioritised however unfortunately it was cancelled again and has now been relisted for next Summer.

Case 7

Client who was due to give evidence at her ex partner's trial last week. The trial was cancelled for the 2nd time.

The first time it was cancelled (due to Covid) she was actually at the magistrates court waiting to give evidence. It took her a great deal of courage to get to court as she hasn't been leaving the house at all for a few months due to fear of leaving her home since the abuse started.

The case was re-scheduled for June. She was informed the night before that it wouldn't be going ahead. The reason was due to the perpetrators mental health. However my clients mental health isn't good at all, and the case being cancelled has brought on a significant

decline, to the point she is considering retracting. The offences happened in January 2020, she is desperate to move on with her life.

My client said the alleged perpetrator would regularly tell her if he was ever brought to court for his behaviour he would get off with it as he would use his mental health to get out of it, which seems to be exactly what is happening now.

Case 8

Sentencing had been postponed due to COVID, finally as restrictions started to lift a date was set, client called into the Witness Care Unit the evening before to confirm what time they were needed at the court to hear sentencing and read their Victim Personal Statement, but was told it was not taking place. The client had not been informed and feels deeply let down by the system.

Case 9

Case initially delayed by 6 months and client has been warned it could realistically be delayed again, due to a Murder trial listed. Also the impact of no public gallery open and limited people being allowed in to the witness suite, makes victim feel unsupported, they agreed on a video link, but client's preference before Covid-19 was to appear in the court room. The impact of these delays means the victim's mental health is affected and they feel re-traumatised.

Case 10

There have been numerous adjournments of a Court Hearing along the way for various reasons. However, the adjournments which occurred after March 2020 were affected by the very limited numbers of cases being heard due to the COVID restrictions and social distancing guidance. These impacted severely on the victim's mental health, and lengthened the time requiring support dramatically. The last delay occurred very recently, which meant the hearing where the victim was needed to attend to give evidence was pushed back a further 24 hours due to the Court waiting for a Health & Safety sign off, for the screens that were erected to facilitate better social distancing. This increased the Courts capacity to hear 2 trials simultaneously as opposed to one trial, which they were operating to before the screens.

Case 11

Due to COVID the case has been pushed back by four months. The delay is having a significant effect on the victim who is suffering from stress, and feelings of worry about the ongoing negative impact of this delay on their elderly relative who is giving evidence.