

Supplementary written evidence submitted by Dame Vera Baird QC, Victims' Commissioner for England and Wales (INV0021)

Query from Laura Farris MP¹

Q21: 'I think I am out of time but can I make a request for a written response from Dame Vera? I want to ask a technical question about the process of giving evidence within the first six months, and perhaps you could put it in writing. How would a victim respond to things the defendant said at trial that they might otherwise have the opportunity to if they were part of the trial, even if it was years later, through either examination-in-chief or cross-examination? I am concerned about Article 6 rights and whether giving evidence too early impedes on that. You could probably answer that.'

Response

1. Section 28 pilots have enabled victims to pre-record their evidence, relieving them from the often unbearable stress of lengthy waits to go to court. A member asked how such pilots allow for victims to respond to comments provided by the defendant when they go to trial.
2. The position is exactly the same whether the complainant gives live evidence or is pre-recorded. Live trial arrangements do not allow a victim to respond to anything that the defendant has said in evidence. The prosecution evidence is complete and their case formally closed before the defence begins. (It is rare that the complainant is even at the trial by the time the defendant testifies but s/he can attend to watch if they choose, pre-recorded evidence or not.)
3. If, exceptionally, the defendant says something material to the case which the prosecution could not have foreseen and they want to have the chance to discuss it with the complainant, again the situation is exactly the same whether s/he has testified live or via S28. Police may make contact and if there is counter-evidence from the complainant which she is willing to give, the prosecution can apply to the judge to recall him/her.
4. They would only be likely to make that application if their case were damaged by the unexpected testimony or the defendant has asserted something they can disprove and thus undermine his case. Judges can allow the recall of witnesses at any stage prior to summing up if the interests of justice require it. If a prosecution witness is recalled and gives evidence, the defence advocate will be allowed to cross-examine on that evidence.
5. If the person recalled was originally subject to Special Measures, such as S28, they usually remain in place for the whole trial. If the complainant were to be recalled a judge would be sensitive to their needs/wishes and since the time for S28 would be past, would be likely to offer a special measure such as the use of Live Link for their new testimony and cross examination.

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¹ Home Affairs Committee (23 June 2021) Oral evidence: Investigation and prosecution of rape, HC 193 (Q21).