



Next steps for special measures

A review of how are they working and what more could be done
Victims' Commissioner and OVC Reviews & Analysis team

May 2021

The story so far...

First introduced in the Youth Justice and Criminal Evidence Act 1999, though implemented over a period of years

What are the measures?

- Screens
- Live link
- Evidence given in private
- Removal of wigs and gowns
- Visual recorded interview
- Pre-trial visual recorded cross examination and re-examination
- Examination of a witness through an intermediary
- Aids to communication



Source: Kingston Guardian (<https://bit.ly/33eOZC4>)

The story so far...

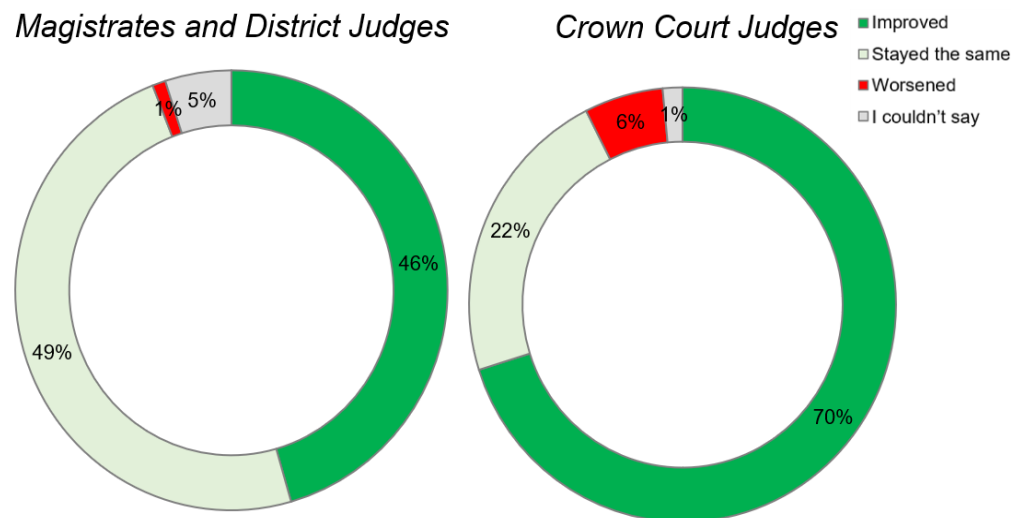
Most judges and magistrates say they have seen special measures provision improve over the course of their careers

Experts agreed that special measures have brought great improvements to the experience of victims and witnesses

In particular, Registered Intermediaries are seen as one of the biggest improvements

But there remain barriers and issues to ensuring all victims and witnesses receive the measures they need

Figure 4.1: Would you say the provision of special measures to vulnerable and intimidated witnesses who need them has improved, stayed the same, or worsened in the time you have been sitting as a Magistrate or Crown Court Judge?



Number of respondents = 101 (Magistrates and District Judges) and 67 (Crown Court Judges)

Gaps in provision

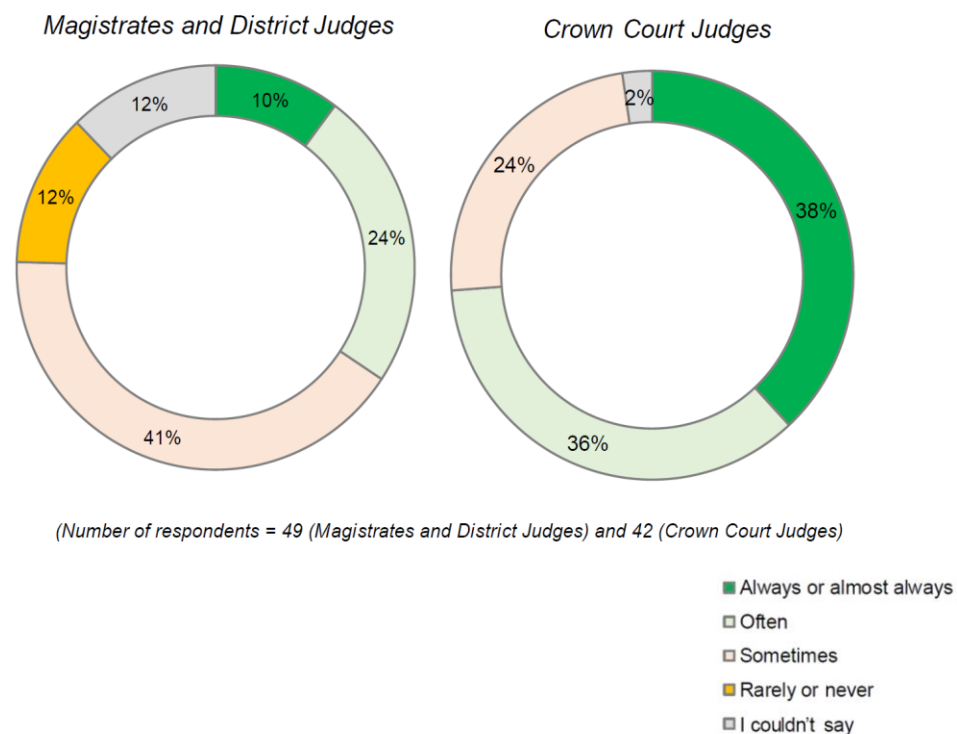
Needs assessment is relatively poorer in Magistrates courts

HMIC inspection (2015) found 23% case files had not recorded witness needs that would require support

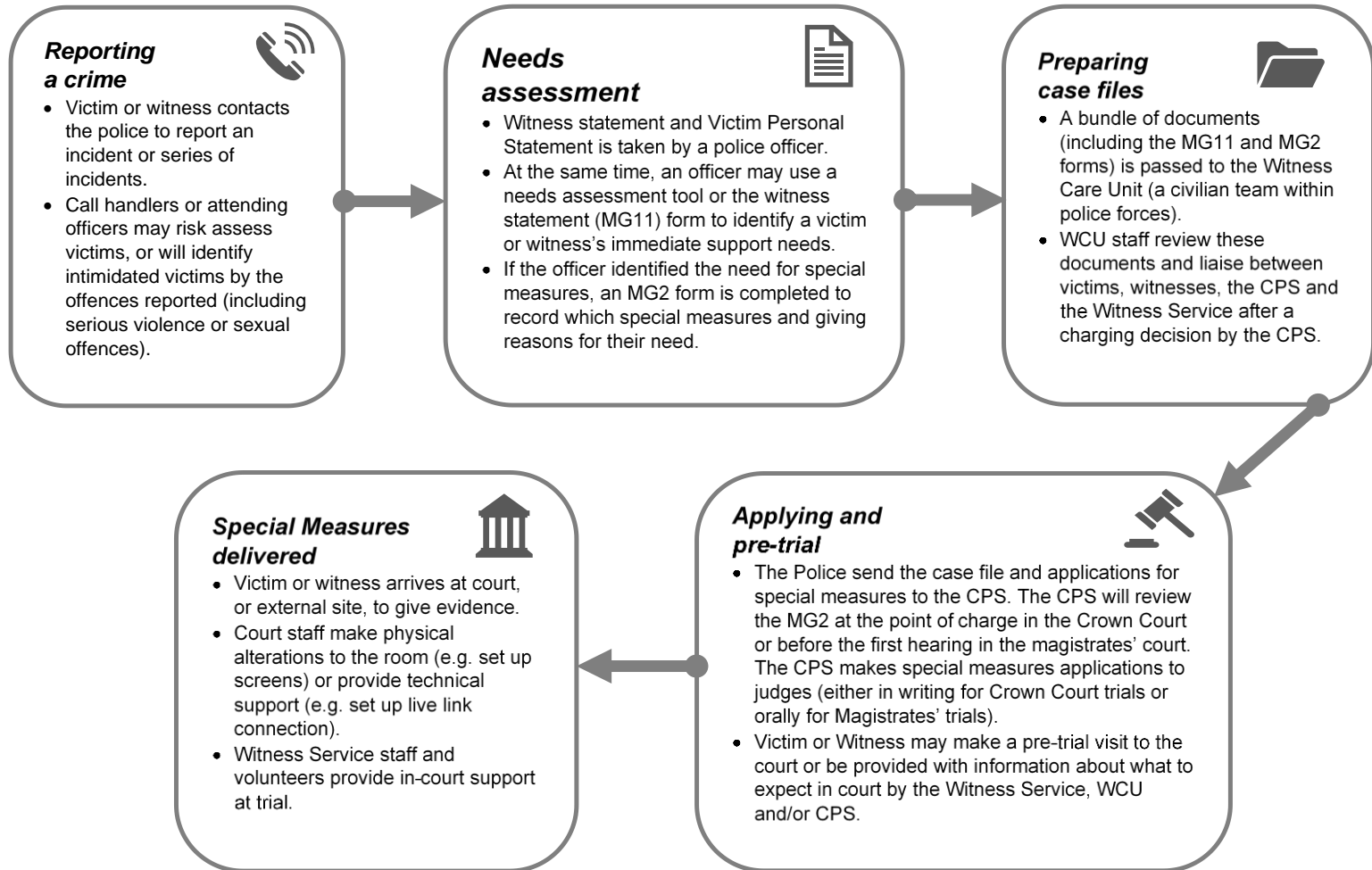
Some victim and witness need are being missed, i.e. victims with mental health difficulties, 'hidden' communication needs, witnesses to more 'ordinary' offences and murder trials, older witnesses, defence witnesses, and victims of labour exploitation

39% of Crown Court judges had encountered complainants in sex cases who were granted special measures but potential witness vulnerabilities had not been identified

Figure 2.1: In your experience, how often are vulnerable victims and witnesses having their needs accurately assessed prior to coming to court, i.e. by the police and/or the CPS?



Streamlining the process



Streamlining the process

Recommendation: The police and CPS work together to streamline the process of assessing need and applying for special measures, focussing response officers on assessing immediate needs and putting the responsibility for special measures with Witness Care Units (WCUs).

Recommendation: WCUs should have overarching responsibility for special measures needs assessments. They should be resourced to speak to all witnesses and armed with a thorough and standardised needs assessment process.

More choice

Evidence in private

- 98% of our judges said this was rarely or never used.

Section 28

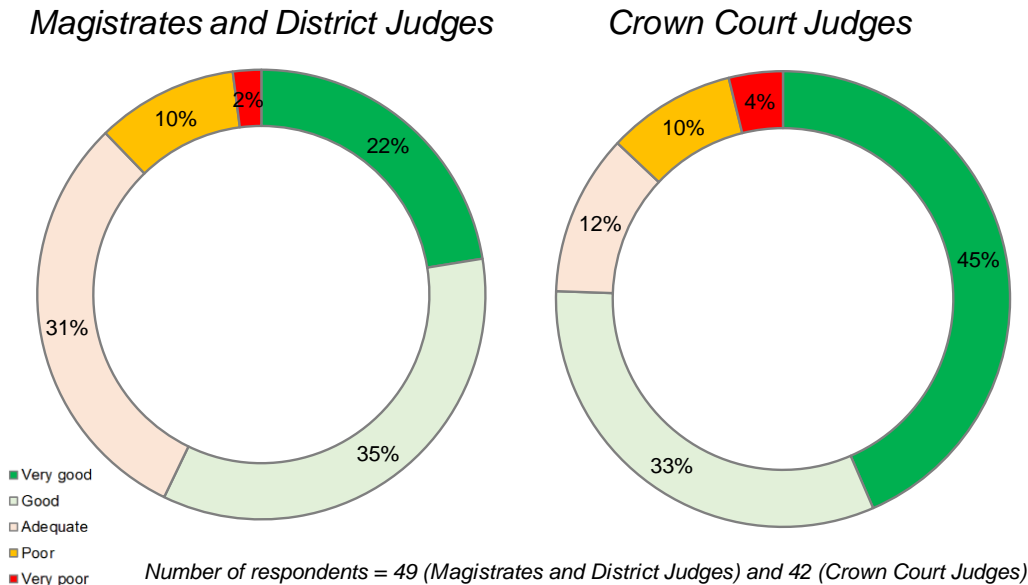
- Evidence from the process evaluation of the pilot e.g. reduced witness trauma, higher guilty plea rate.
- Around 95% of our judges rated the measure as very effective or effective in lessening witness anxiety – top of all measures.
- Witness Service survey – 86% felt video-link had positive effect on witnesses, and 94% felt it made giving evidence more accessible.

Recommendation: In its guidance to prosecutors on closing the public gallery, the CPS should remove references to ‘exceptional’ cases. MoJ should engage with the judiciary to promote use of this as a special measure during the evidence of a vulnerable or intimidated witness.

Recommendation: HMCTS introduces s28 for intimidated as well as vulnerable witnesses across Crown Courts as soon as practically possible. In due course, consideration should be given to offering it more widely, especially when trial dates are a long time in the future.

Parity between magistrates' and Crown Court

Figure 4.5: In your opinion, how good is the provision for screening witnesses from the defendant in your court (or the court you sit in most often)?



Recommendation:

Magistrates' courts need parity with the Crown Court, through equal provision of facilities and equipment to guarantee the availability of tailored support for vulnerable and intimidated witnesses.

During Covid....

Witness Service survey found poor communication during Covid

15% strongly agreed witnesses understand exactly what special measures will be in place for them in advance of the day on which they are called to give evidence

Mixed picture of provision:

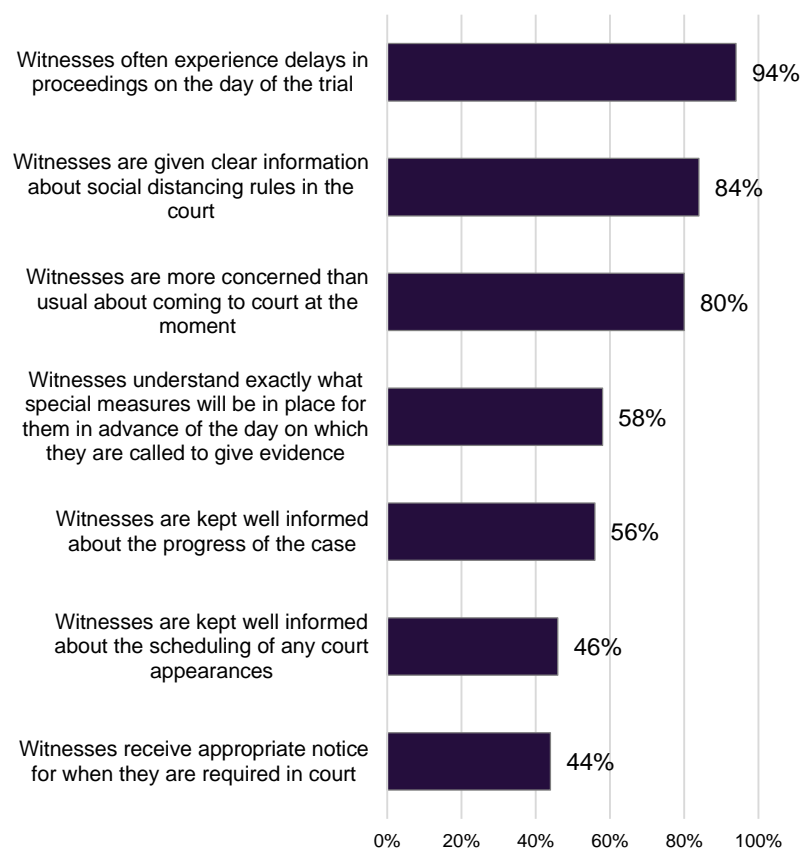
28% of Crown Court judges said provision of screens worsened under Covid arrangements

A third of Magistrates and CC judges said live links from outside court building had improved

Element of non-choice about using live-link → importance of screen the screens

The use of remote evidence centre needs to be optimised

Proportion of Witness Service staff who agreed or strongly agreed with these statements (excluding 'don't knows')

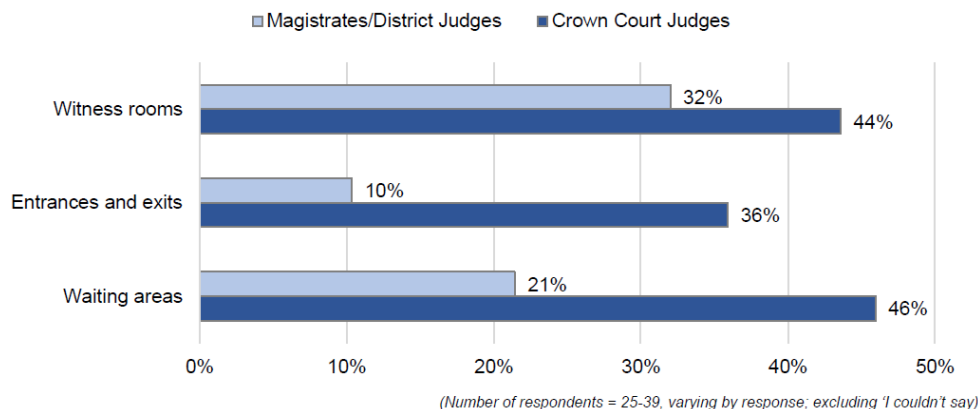


A better witness experience all round

“There's no concept of where they're travelling from, whether they're vulnerable, whether they're desperate to give their evidence in order to get it out of the way on with their lives [...] And that's so wrong.”

- Interview with Witness Service

Figure 7.1: In your opinion, how good are the wider facilities in the court building (your court building of the one you sit in most often) at accommodating the needs of vulnerable and intimidated witnesses? Proportion who said 'good' or 'very good'



Recommendation: HMCTS sets out a protocol re-iterating the importance of witness needs in listings. It should include the requirement that trials including vulnerable and intimidated witnesses are not 'double listed' (scheduled as a backup for another case in the same court).

Recommendation: HMCTS and the judiciary ensure that a separate entrance to the court building is available to all vulnerable or intimidated witnesses, even if this means using a judicial or staff entrance. The alternative entrance must be suitable for disabled witnesses to use.

Measuring delivery

“If the country was to make a policy that was to say that every child 11 years and under gets an intermediary, one of the things that the country would struggle with right away is the country can’t tell you what that demand looks like.

“The justice system doesn’t know how many 11-year olds and under are witnesses or victims of crime and of those how many subsequently go to court.

“If you want to implement such change the most important thing is to build the infrastructure to meet demand first, and what and build your cadre [of Registered Intermediaries] with the right skills in the right places.”

- Interview with National Crime Agency

Recommendation: The Ministry of Justice and Home Office should develop a national protocol for data collection on special measures, in conjunction with the other agencies involved in delivery.

This protocol should include the recording of data on victim vulnerability and intimidation, witness choice over special measures, applications for and granting of specific measures, and protected characteristics.

Next steps

Much has been achieved but much has yet to be done

Domestic Abuse Act will extend automatic entitlement for special measures to all domestic abuse witnesses, multiplying up those will be entitled to use them

One means of optimising victim confidence and maximising their protection is to allow them to give their evidence remotely from specific evidence centres located away from the courts.

...any questions?

Q&A

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