



CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN ENGLAND AND WALES

National Report for AIMJF's Comparative and Collaborative Research.

La participación de niños como víctimas o testigos en causas penales en Inglaterra y País de Gales

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants en tant que victimes ou témoins dans des affaires pénales en Angleterre et Pays de Galles

Rapport national pour la recherche comparative et collaborative de l'AIMJF

Godfrey Allen¹

Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in England and Wales.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Inglaterra y País de Gales

Résumé : Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procédurales de la participation des enfants dans le système de justice en Angleterre et Pays de Galles

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

¹ District judge in London



To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal cases is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

Questionnaire

1. **Right to be heard**

1.1. Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)? **Children are presumed to be capable witnesses.**

1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)? **The Court may wish to be satisfied as to the fitness of a child to be heard. The court will consider representations from the CPS and Defense and of its own volition in this regard. Expert written assessment (e.g from a suitably qualified child psychologist) are normally provided.**

1.3. Are children allowed to refuse to make a statement? **Yes. Children, indeed, anybody has a right to refuse to make a statement in any criminal/civil proceedings** If so, in which cases? **Any Court proceedings.**

2. **Broad perspective of the legal framework and procedure**



2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)? **YES. Youth Justice and Criminal Evidence Act 1999, Section 53**

53 Competence of witnesses to give evidence.

(1) At every stage in criminal proceedings all persons are (whatever their age) competent to give evidence.

(2) Subsection (1) has effect subject to subsections (3) and (4).

(3) A person is not competent to give evidence in criminal proceedings if it appears to the court that he is not a person who is able to—

(a) understand questions put to him as a witness, and

(b) give answers to them which can be understood.

(4) A person charged in criminal proceedings is not competent to give evidence in the proceedings for the prosecution (whether he is the only person, or is one of two or more persons, charged in the proceedings).

(5) In subsection (4) the reference to a person charged in criminal proceedings does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

The Witness Charter provides a framework within which agencies involved with child witnesses are expected to operate. <https://www.nationalcrimeagency.gov.uk/who-we-are/publications/425-the-witness-charter-standards-of-care-for-witnesses-in-the-criminal-justice-system/file>

2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? **Yes.** Is there any flowchart in your country to coordinate these interventions? **Yes.** If so, could you please share it? **Yes. See Witness Charter file (page 6). lowchart for dealing with youth defendants also attached as a separate file.**

2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved? **YES. See Witness Charter and**



A victims strategic needs assessment files for more details. The major step is the police interview(s) with the witness/victim. The police look for the witness/victim, where possible to identify the offender(s). This may involve the victim/witness participating in the offender identification process. This may be a live and/or photo identification processes. The police present their case to the CPS for charging of the alleged offender. Further enquiries and discussions with witness/victim take place prior to Court appearance.

2.4. In which moment(s) can a child be heard in this procedure? **At interviews and at Court.**

2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? **No. The Crown Prosecution Service (CPS) brings the prosecution not the child. The child's cooperation is essential for the proper conduct of the prosecution process.** If so in which cases?

3. Preparation for the child participation

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them? **Yes.**

[Resources to support your child - Victim Support](#)

[Support for children and young people | Police.uk \(www.police.uk\)](#)

[Safeguarding Children as Victims and Witnesses | The Crown Prosecution Service \(cps.gov.uk\)](#)

3.2. How do children have access to these materials? **From the police, victim support services, the Court, the CPS, on line etc** (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, or any other?) **This is freely available material provided by the three key agencies, the Victims Support Charity, the police and the CPS. Many other organizations, (e.g. specialist children's charities) concerned with children as victims and witnesses provide these and other material too.**



How long before the interview/hearing does this happen? **Usually provided by the police and other with initial contacts. No specific time as information is freely available.**

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? **Yes, See resources detailed above provided by the Police and the Crown Prosecution Service.** If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? **Yes, all of those issues amongst others.** If so, what is the legal background of their professional conducting this assessment? **Specially trained police officer, CPS lawyers, victim support staff etc** To which institution does this professional belong etc? **Police, CPS, Victim Support etc** Is there any kind of report produced? **Yes**

3.4. Is there any kind of contact or evaluation with the parents or legal guardians? **Yes. See attached Witness Charter and CPS/Police files.**

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing? **Yes, but not always possible.**

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)? **Yes, Pretrial therapy amongst other support is available before, during and post trial. See CPS/Police files and Witness Charter:**

It is vital that victims are supported and can access timely therapy, both for their own recovery and to increase the likelihood of successful criminal justice outcomes. It is therefore paramount that all victims are aware that they can access therapy to ensure that their emotional and psychological needs are met before, during and after the trial.

4. Protection and Support

4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? **Yes** If so, who conducts it? **Police, CPS, Victim support etc** Is there any specific tool? If so, can you share it please? **Yes, they all have their own tools, but similar criteria (eg, they all support Achieving Best Evidence protocols. See CPS/ Police files and Witness Charter.**



4.2. In case of identification of risks, what kind of protective measures are available in your country? **See CPS/Police files and Witness Charter**

4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process) **See CPS/ Police files and Witness Charter.**

4.4. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? **See Police/CPS files and Witness Charter.** Is there any/which kind of support offered to the remaining members of the family? **Yes, See CPS/Police files and Witness Charter files.** Are there any specific measures in case of child abduction or child kidnapping? **Yes. See CPS/ Police files and Witness Charter.**

5. Environment

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase? **Pre-trial-Normally police station, at Court and heard in the Youth/Family Courts. Sometimes, heard at the Crown Court for either way/indictable only cases.**

5.2 Is there any specificity in this environment to adapt it for children? **Yes, For example, the layout of the Youth Court is adapted to be less formal than the adult court. The participants are all at one level sitting behind desks. The child is referred to by their first name, the language used by all professional court participants eg, lawyers, magistrates/judge, Court legal advisor etc is required to be child friendly (e.g, avoidance of legal jargon, abbreviations etc.(e.g. separate 'building' specifically for children; non child- specific building, but separate entrance for children; separate interview/hearing room for children)**

5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? **Yes, but depends on availability, some, not all, police stations have special suites for child interviews, If so can you please share it? See Witness Charter, Bedfordshire Police file etc Can you share a photo of this space? Yes. See New victim and witness room file.**

5.4. Is there a specific waiting area for the child? **Not normally.**

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? **Yes** if so what kind? (e.g. separate entrance, separate



waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc) **Yes, all of those examples except voice or image distortion.**

5.6. In case identification of the offender is needed, how is this conducted, and where? **See response to question 2.3.**

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake? **Transportation to and from court is arranged for the victim and witness through the police/victim support services etc**

5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? **Yes. In which circumstances? For example, where a young person may be held in custody and unable to be produced in court by the detention authority, or where a child may refuse to attend court but is willing and it is possible to provide video link testimony to the court etc. Are any / which special security measures (are) adopted? Yes, eg, screens in court stopping everybody in court, except the lawyers, magistrate/judge and other Court staff from seeing the witness/victim give evidence.**

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? **Attendance is normally required except for exceptional reasons for not doing so. Child witnesses may participate in court proceedings via video link and/or Special Measures (eg. Screens in court to prevent the child being seen by anybody other than the lawyers and the magistrate/judge and other court officials).**

The admissibility of recorded investigative interviews are a matter for the Magistrates/Judge.

If the child has to appear in court, which circumstances are determinant? **The child is deemed capable of providing evidence and follow proceedings with the support of the prosecution agencies and witness services etc.**

6. Specific legal guarantees for the child

6.1. Does the child have the right to legal assistance? for free? **Yes** Is this assistance specialized? **Yes, For example, child defendants and any child being interviewed by the police/CPS are entitled to free legal representation.** At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview

/ only in court / other) If an appropriate adult/parent is present interview can take place, but retains the right not to be interviewed without legal representation remains.

6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)? All of those roles

6.2 Does the child have the right to be accompanied by a support person? Yes If so, what is the role of this person? Depends on the support person, For example a legal advisor provides legal counsel, whilst a parent would be protective of the well-being of their child amongst other things, specialist police officers are able to support the child witness/victim and their family with practical arrangement for attending court, preparing to experience court etc. What is this person entitled to do in support of the child? Depends on the support person as previously described.

6.3. What is the role of parents/legal representative? To protect the interest of the child, ensuring that they are not subject to unsatisfactory questioning, provide emotional support etc.

6.3.1 When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)? Yes, for those types of reasons,

6.3.2. If excluded, is there another legal representative appointed/ if so by whom? Free independent legal advisor provided by the state is available . For example, a Duty solicitor (lawyer) is made available to attend any police stations for anybody facing interview by the police.

6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child can not be identified?) Youth and Family Court cases are closed to the public and place restrictions on media reporting of proceedings.

6.5. Is the child allowed to plea for cautionary measures? Out of court disposals of Youth Court cases are granted at the discretion of the CPS in consultation with the police and youth offending services. The young person would be required to make admissions of culpability to the allegation.

6.6. Does the child have the right to appeal any decision? Appeals against the decision of the courts would have to be made on points of law by the legal representative of the child.



7. Interviewing structure and procedure

7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? **Pre-trial-** Police, CPS, Appropriate Adult/Parent. **Trialphase** -CPS/defense lawyers, magistrate/judge, defendant, their parents/appropriate adult, youth offending service officer(s), Intermediary (if required) ,Interpreter (if required) W,itness services (if required) etc How often is a child usually heard in total (pre-trial and trial)?**Minimum of twice (police interview and at court (assuming no cross examination)** Does the law limit the total number of interviews/hearings conducted? **No**

7.2. Is it mandatory that this professional has specific training for child interviews? **Yes**

7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)? **Yes** If so, which one? **See witness charter, Bedfordshire Police file, CPS/Police files.** If so, could you please share it? **Yes, See files referred to in previous answer.**

7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any? **Interview – Police (and sometimes an appropriate adult/parent. Sometime legal representative. For example where the child is under caution. Hearing – Defense Lawyer, CPS, Presiding Magistrate/Judge, Court legal Advisor (fmr, Clerk) etc See answer to question 7.1**

7.5. Who is addressing the child victim/witness: only the interviewer? **The police gather the interview evidence and it is presented to the CPS who might seek further interview evidence .This evidence is examined in the Court trial process by the CPS, the defence through cross examination and the magistrates/judge. cross examination allowed? No, its an interview. if only the interviewer, how can other participants ask questions? The purpose of the police interview is to gather information captured in a signed statement. How is the communication between those who follow the interview and the interviewer? For example, a signed statement of interview will be shared with relevant parties, pre trial should the matter result in court proceedings. Discussions between the police and CPS will routinely take place, as will discussions with parents/appropriate adult etc What kind of communication tool is used? For example, briefing discussions, sharing of interview statement with witness/victim,their parent, legal advisors etc**



7.6. Is the interviewer allowed not to ask the questions raised by others? **Depends on the question and view of the interviewer** Is the interviewer allowed to rephrase the questions raised by others? **Yes .For example. For the purpose of clarification.**

7.7. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)? **Yes, for those reasons and others.**

7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc)? **The recording is expected to be as given and not distorted. It may be edited (i.e. shortened) by agreement between the CPS and the defense where, for example, it is considered to have no relevant evidential value.**

7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted? **A written record of the interview is provide alongside any videoevidence. Normally it is the written (not video) record of interview that is presented to the court.**

7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? **Yes** Is the child/legal representative allowed to get a copy of written statement / recording? **Yes**

7.10. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? **Yes. However, a child may be summoned to attend court and is expected to comply** Are there still adaptations in this case? **Yes**

8. Offender's right during or after the interview

8.1. Is the alleged offender allowed to participate in the interview of the child witness? **No.** Is his/her defence attorney allowed to participate? **No** Is participation of either of the two mandatory? **No**

8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements? **The defendant can challenge any evidence against them put to them by the police following interviews and again at Court.**

9. Parallel proceedings – coordination

9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview? **Youth court proceedings normally take priority over all other magistrate and crown court proceedings except those of the coroner's court.**

9.2. Is there any coordination procedure between different courts/authorities? **Some coordination. For example, where proceeding involving a youth is taking place in the Crown court and the Youth Court, the Youth Court matter would take priority. How is the coordination procedure? The advocates are expected to know where their court attendance is prioritized. Similarly case management is part of the process at court to manage the preparation for trial. It deals with the timetable for the CPS to disclose materials etc to the defense, agreeing witnesses required to attend court or submit written testimony etc**

9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)? **Yes, depending on the particular circumstances i.e. to assist with another criminal investigation, provide further clarification etc. The defendant is entitled to know why they are being interviewed and would be entitled to legal representation when facing interview.**

10. Training

10.1. Are judges and magistrates trained to deal with child victims? **Yes, however, training varies between judges, magistrates and other professionals.**

10.2. Is the content of the training interdisciplinary? **Yes, sometimes** Do other professionals also participate in the same training? **Yes, sometimes**

11. Reforms in progress



11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others **National elections taking place so unclear what reforms will take place. However, the Victims and Prisoners Bill was due to be as be introduced by Parliament. What is the aim and the main subject of it? Will become clearer, post - election with the new government. The Bills key measures are:**

Part 1 of the Bill will send a clear signal about what victims can expect from the criminal justice system by:

- Placing the overarching principles of the Victims' Code into primary legislation, to send a clear signal about what victims of crime can and should expect from the criminal justice system.
- Placing a duty on relevant bodies to promote awareness of the Victims' Code so that victims are aware of and understand their entitlements both before victims choose to report a crime, and throughout the victim's journey in the criminal justice system.

The Bill will strengthen transparency and oversight of how criminal justice bodies treat victims by:

- Placing a duty on criminal justice bodies and Police and Crime Commissioners (PCCs) to jointly keep under review compliance with the Code, to encourage local collaboration, gather insights into local performance, and drive the necessary improvements. Non-territorial police forces will have a similar duty, but will jointly review their compliance within their governance structures.
- Requiring criminal justice inspectorates to consult the Victims' Commissioner on their inspection plans, and providing a power for ministers to direct joint thematic inspections on victims' experiences, to provide greater oversight of how victims are treated.
- Requiring the Victims' Commissioner to lay their annual report in Parliament, and requiring departments and agencies named in published reports to respond to recommendations directed at them within 56 days, to enhance scrutiny of actions taken to improve victims' experiences.
- Simplifying the process for victims of crime to make complaints to the Parliamentary and Health Service Ombudsman by removing the need to go through an MP where their complaint relates to their experiences as a victim, to make the service more accessible for victims.

The Bill will improve support for victims by:

- Introducing a joint statutory duty on PCCs, Integrated Care Boards and local authorities to work together when commissioning support services for victims of sexual abuse, domestic violence, and other



serious violence, so that services can be strategically coordinated and targeted where victims need them.

- Requiring that statutory guidance is published about the roles of Independent Sexual Violence Advisors (ISVAs) and Independent Domestic Violence Advisors (IDVAs), to increase awareness and consistency of these roles.

We have also committed to a wider package of measures that can best be tackled outside legislation to support further improvements for victims. These are set out in the Government's response to the consultation "Delivering justice for victims - a consultation on improving victims' experiences of the justice system".