

Criminal Justice System Seminar: An update report

August 2018

INTRODUCTION

1. This report provides a summary of the seminar on how cases of child sexual abuse are handled by the criminal justice system, which the Inquiry held on 21 and 22 November 2017.
2. The report is not intended to be a comprehensive analysis of all the views expressed at the seminar. Its purpose is to summarise the discussions and to highlight key areas for future work. The seminar did not constitute a formal evidence-gathering session.
3. The purpose of the seminar was to gather information and views about how child sexual abuse cases are dealt with by the criminal justice system. The seminar concentrated on what is and is not working well, as well as on possibilities for future improvements.
4. The focus of the seminar was the journey of victims and survivors through the criminal justice system. The experience of defendants, witnesses and others was therefore outside the scope of discussion.
5. On the first day of the seminar, the Inquiry heard from victims and survivors of child sexual abuse who had personal experience of the criminal justice system, and from representatives of organisations that provide support to victims and survivors. On the second day, the Inquiry heard from professionals who work within the criminal justice system. Attendees from the public gallery, including those designated as core participants in some of the Inquiry's investigations, also contributed to the discussions on both days. Each day the discussion was split into two sessions: one session on reporting and the initial investigation of child sexual abuse and the other session on the court process.
6. The Inquiry would again like to thank everyone who attended and contributed to the seminar for their invaluable input.
7. The report is structured around six key themes that emerged during the discussions:
 - barriers to reporting
 - timelines and delays
 - support services for victims and survivors, including special measures
 - complexity and coordination in the criminal justice system
 - resources and funding
 - the role of the criminal justice system and victims' and survivors' voices

Barriers to reporting

8. Participants drew attention to significant and wide-ranging barriers to reporting child sexual abuse.
9. Problems in identifying abuse were raised. It was noted that victims and survivors may not necessarily recognise that sexual abuse or exploitation has occurred. Furthermore, many participants described a communication divide between victims and survivors and the people they are expected to report to, such as professionals and police. This problem can be particularly severe when a victim and survivor is younger or suffers from learning difficulties, or when there are cultural differences between a victim and survivor and the people they are expected to report to. This can mean that disclosures of abuse may not be recognised as such.
10. Participants discussed barriers that exist or are more significant for specific groups of victims and survivors. It was suggested that traditional ideas about masculinity create barriers to male victims and survivors reporting abuse. Those identifying as lesbian, gay, bisexual or transgender, those who come from 'broken homes', those seen as 'problem children' and those with previous convictions may mistrust people in positions of authority because of their experiences. This can leave those victims and survivors reluctant to approach police or school staff, for example, to report the abuse.
11. Participants and those in the public gallery emphasised the importance of being believed and having their experiences taken seriously. The same groups that may lack trust in authority figures were seen to be less likely to have their reports of abuse taken seriously.
12. An imbalance in power between a victim and survivor and the person(s) abusing them and a fear of repercussions were identified as key barriers to reporting abuse that had occurred in familial and institutional settings. To overcome such barriers, participants emphasised the importance of improving awareness, education and training for those best placed to identify abuse.

Timelines and delays

13. A core concern raised on both days of the seminar was the long delays experienced by victims and survivors going through the criminal justice system.
14. One participant told the Inquiry about an almost four-year gap between reporting child sexual abuse and the criminal trial. This was due to a lack of video interview appointments and a lengthy investigation, during which they were required to provide multiple statements. Another described a two-year gap between reporting and trial, followed by an adjournment of 38 weeks on the first day of the trial because of timetabling problems. The participant had not been warned that the process could take that long. Participants said that delays could occur at all stages of the court process, and that although the focus is often on the period between a criminal charge and when the case concludes, some of the longest delays could occur early in the process, between a police report and the decision by the Crown Prosecution Service to charge a suspect.
15. Participants explained that delays in the criminal justice process can cause frustration and distress, and this can result in higher rates of attrition. They said the negative effect of these delays can be particularly severe for younger victims and survivors, who may want to pull out of a criminal case when it stretches over a very long period. For these victims and survivors a process taking a number of years represents a significant proportion of their lifetime.
16. The Inquiry was informed that some delays are the unavoidable result of necessary steps in the criminal justice process. Disclosure, trial preparation and coordinating the timetables of multiple parties mean the process can be lengthy. It was suggested that the length of the process may also allow for investment in the relationship between victims and survivors and their support teams.
17. The Inquiry was told that there have been some steady improvements, demonstrated by statistics from the Ministry of Justice, in the period between a first listing and the completion of a case. However, participants described lengthy delays in the criminal justice process that remained unexplained or unjustified.
18. Participants indicated that court systems can cause significant delay and frustration. 'Warned lists' mean that all parties in a criminal trial must be prepared to start the case on any day within a period of one or two weeks. However, the case may not start (or 'be called on', as it is described) during that period. If it is not called on, it may be relisted (that is, rescheduled) for a date that may be weeks or months later.
19. A related but separate system that attracted criticism from participants was 'floating listings'. These require parties in a criminal trial to be at court on a specific day. Again,

the case may not in fact be called on if a courtroom is not available. While these systems may have the benefit of ensuring court resources are put to maximum use, participants said they have the potential to cause significant distress to victims and survivors and others involved by creating uncertainty.

20. Policies exist which are intended to ensure cases involving young or vulnerable witnesses are dealt with more quickly. However, it was noted that such cases are delayed by being given warned or floating listings, contrary to policy.

Support services for victims and survivors, including special measures

The role of support services

21. Victims and survivors and those representing support services said that a dedicated individual from a specialist support service could provide crucial continuity, stability and support for victims and survivors during their journey through the criminal justice system. This support plays a critical role in safeguarding victims' and survivors' wellbeing and helps to ensure that victims and survivors can stay engaged with what may be a long process.
22. Participants shared their personal experiences of the support they received from Independent Sexual Violence Advisers (ISVAs), both for reporting abuse and during the course of their cases. Participants said that ISVAs provide crucial support and liaison with other organisations. Participants from organisations that support victims and survivors described the important role intermediaries can play before trial in helping with 'Achieving Best Evidence' video interviews. They also outlined the work organisations can do from the first police interview through to post-trial support.
23. Participants discussed the importance of support being tailored to the individual victim and survivor, particularly in relation to their gender and age. A lack of availability of male ISVAs and older ISVAs was discussed: this is covered in more detail in 'Resources and funding'.

The experience of giving evidence

24. Giving evidence at court is likely to be a highly significant part of the criminal justice process for victims and survivors. Participants noted that the adversarial process can be traumatising.
25. Participants discussed the use of 'special measures', a series of provisions designed to assist vulnerable witnesses to give their best evidence in court and relieve some of the stress associated with the experience. Examples included a victim and survivor giving evidence from behind a screen in court, video-link evidence and the use of intermediaries.
26. A scheme has been piloted which allows vulnerable and intimidated witnesses to record their cross-examination before trial: 'the Section 28 scheme' (this refers to section 28 of the Youth Justice and Criminal Evidence Act 1999¹). The scheme was highlighted as having the potential to reduce delays and uncertainty for a victim and survivor. The pilot of the scheme showed that using pre-recorded cross-examination greatly increases early guilty pleas.
27. However, potential dangers with the Section 28 scheme were also explored. These included problems that could arise with timetabling trial preparation and separate cross-examination hearings,

¹ Youth Justice and Criminal Evidence Act 1999 c.23. [Online]. Available at: <http://www.legislation.gov.uk/ukpga/1999/23/section/28> [Accessed 13 June 2018].

potentially causing new case delays by increasing the burden on court resources. From the perspective of victims and survivors, participants also noted that use of the procedure will not be appropriate for everyone and it was suggested it could risk inadvertently disempowering a victim and survivor by depriving them of the opportunity to face their perpetrator in court. Good guidance and careful training in the use of Section 28 procedures was urged by one participant to mitigate such risks.

28. Participants agreed on the important work done by intermediaries in the court process, in addition to their role pre-trial. Research has indicated that children can struggle to understand the court process, so intermediaries are particularly important in bridging the communication gap between criminal justice professionals and vulnerable and child witnesses.
29. Across both days, the importance of ground rules hearings was also discussed. These are hearings that take place before a trial to determine rules, boundaries and plans around witness evidence. Participants noted that the focus and planning involved in such hearings resulted in more effective victim participation and better evidence.
30. The importance of victims and survivors being given meaningful and informed choice about which special measures are available to them during the trial process was also emphasised in the discussion. Some participants noted this does not always happen.
31. The Inquiry also heard about 'Advocacy and the Vulnerable Training', which is not currently mandatory but has been provided to Crown Prosecution Service advocates. Participants hoped this would bring beneficial changes to the questioning of vulnerable witnesses but noted this depends on how the training is provided and put to use.

Complexity and coordination in the criminal justice system

32. The need for effective coordination and interaction within and between organisations and government agencies working in the criminal justice system was a theme throughout the seminar. This was raised in the context of a criminal justice system that was said to be complex and confusing for victims and survivors. Participants raised concerns about the number of different agencies and people that a victim and survivor will encounter on their journey through the criminal justice system which could lead to this confusion. A related issue discussed by participants was communication between professionals in the criminal justice system and victims and survivors.
33. As an example of problems with coordination within organisations, participants described reports of abuse being lost by police and having to make multiple disclosures of the same abuse because of poor coordination and record-keeping. This causes distress, frustration and delay, with victims and survivors feeling they had been left open to attack at trial for any inconsistencies between the numerous reports.
34. The importance of multi-agency working was emphasised by participants. The Inquiry heard about the Specialist Child Abuse Investigator Programme, which is designed to train officers how to investigate the most serious abuse cases. It was noted that multi-agency collaboration is essential in deciding how to progress an investigation, a decision that must also have safeguarding at its heart.
35. A number of participants described the problems that arise when agencies within the criminal justice system fail to recognise or coordinate with victim support services during the court process. Participants gave examples of ISVAs not being recognised by courts and, in some instances, not being allowed into the courtroom.
36. Participants said that insufficient communication with victims and survivors can compound the problems of delay. On the other hand, clear communication and openness with victims and survivors can improve their experience of the process. Many participants attested to insufficient or misleading information that victims and survivors had received during the course of their case. There was agreement that a lack of communication can leave victims and survivors feeling disempowered.
37. 'The Code of Practice for Victims of Crime' (the Victims' Code), a statutory document of victim entitlements, sets out the range of communication that a victim is entitled to, including updates on case progress and outcomes. However, participants voiced concerns that these obligations were not always met.
38. Throughout both days of the seminar, participants raised wider concerns about inconsistent interpretation and application of policies. They discussed inconsistencies in advice given to victims and survivors on the

permissibility and advisability of pre-trial therapy. One participant said that ongoing work to improve the criminal justice system, including efforts to implement the Victims' Code, was not obvious in practice.

39. One professional working within the criminal justice system described a delicate balance between allowing room for discretion and personal judgement and the need for consistency. Funding was also suggested as a reason for inconsistency experienced by many of the seminar participants.
40. Participants said that work is being undertaken across the criminal justice system to try to simplify and consolidate the processes for victims and survivors. For example, combined units to provide

support so that the number of contact points for victims and survivors can be reduced. The important role an ISVA can play in coordinating different agencies was also highlighted.

41. The Inquiry was told of plans to develop a common platform across the criminal justice system to provide information throughout the victim and survivor journey through the criminal justice system. However, there was consensus among participants that more needs to be done to join up the criminal justice system for victim and survivors of child sexual abuse. The recent family justice system reforms and their outcome, reducing the length of court proceedings, was suggested as a good model for this.

Resources and funding

42. A consistent theme throughout the seminar was the strain placed on the criminal justice system by increased reporting and prosecution of child sexual abuse and problems relating to a lack of resources. Deficits in funding and allocating victim support services were a serious concern for victims and survivors and representatives of support services who were present.
43. One area of focus during the seminar was intermediaries. Participants said there had been a steep increase in demand for their services, but there were not enough registered intermediaries to meet demand.
44. Participants also raised broader concerns about funding structures, noting that resources are often contracted on a short-term basis, leaving services and the victims and survivors who rely on them uncertain about the sustainability of the support given.
45. Participants described the complexity of funding structures as a problem, with the number of commissioning agencies and the complicated relationship between them making local decisions difficult for organisations. Developing bids and trying to secure funding was also described as time-consuming for the organisations which are trying to provide such support.
46. Many organisations said that a severe lack of funding stopped them from providing fuller or more geographically diverse services. The phrase 'postcode lottery' was a recurring theme, with many noting that the nature and quality of services available varies widely depending on location. The Inquiry heard about work being carried out by the Ministry of Justice to try to identify areas where the provision of services is good and areas where there are gaps.
47. The Inquiry was told that the cost of providing a specialist, quality service to victims and survivors of child sexual abuse was necessarily high. The bidding system used for funding can mean crucial elements of a service are omitted to undercut another bid. One participant gave the example of professionals in support services being denied the clinical supervision they need.
48. Participants, including those in the public gallery, said that limited funds led to resources and services becoming increasingly specialised. Participants warned of the risks of this, including the potential for an inequitable distribution of funding and the needs of some victims and survivors not being met.
49. During both days of the seminar, several participants said there was a lack of some specialist support services, such as male ISVAs, for male victims and survivors, which is exacerbated by a lack of funding. The lack of availability of older ISVAs, for those victims and survivors who prefer to work with someone over a certain age, was also raised. The cost of training ISVAs was said to play a part in limiting the availability and diversity of ISVAs.

The role of the criminal justice system and victims' and survivors' voices

50. Beyond the detailed discussions about what works and what does not work for victims and survivors in the criminal justice system, there was a wider discussion on the role of the criminal justice system and how effectively it meets the needs of victims and survivors. There was consensus among participants about the importance of victims' and survivors' voices being heard and influencing how the criminal justice system operates to improve their overall experience of the system.
51. While one participant noted that the overarching aim of the criminal justice system is to 'deliver justice on behalf of the public at large', others suggested that the role of the criminal justice system extends beyond this. Participants working in the criminal justice system emphasised the importance of treating a report of child sexual abuse to the police as an opportunity to provide help and support to victims and survivors. They also underlined the need to provide such support whatever the charging decision or verdict.
52. Participants discussed the need for alternatives to the criminal justice system arising for two groups: those victims and survivors whose cases do not reach the high threshold required by the court system and those who are seeking protection and access to services to aid their recovery, rather than a punitive approach. It was suggested that the latter might be particularly relevant for cases of peer-on-peer abuse involving children from the same schools and communities.
53. Restorative justice was discussed, with participants noting its potential benefits, such as a sense of empowerment and closure for victims and survivors and the possibility of uncovering important insights into the culture or systems that had led to abuse. Participants also recognised the need for it to be facilitated by professionals and cautioned that the experience can be re-traumatising for victims and survivors and may not provide them with the answers they were seeking.
54. During the seminar, the Inquiry heard from victims and survivors about their experience of the criminal justice system when things did not work as they should. One participant from the public gallery emphasised the significance of the trust a victim and survivor is asked to invest in the agencies and individuals handling their case, and the damage done to that trust when things are mishandled.
55. The importance of ensuring victims' and survivors' voices are part of the work of agencies within the criminal justice system was emphasised. One participant provided an example of what appeared to them to be a good result – a conviction and lengthy sentence – being undermined by the very poor experience the victim and survivor had of the criminal justice system.

56. A number of participants agreed that the voice and experience of the victim and survivor must be at the centre of these agencies' work. In addition, participants outlined the 'enormous value' of speaking to victims and survivors directly. The Inquiry heard about various initiatives that seek to do this, including conferences held by the National Police Chiefs' Council that focus on victims and survivors and the community-based groups that the Crown Prosecution Service relies on to inform policy and guidance.

Future work

57. Participants at the seminar provided a range of perspectives about what does and does not work well in the criminal justice system for child sexual abuse cases. The themes discussed linked with those discussed in other seminars, such as support services in the seminar on victims' and survivors' experiences. The information and views provided at the seminar will provide useful context as the Inquiry considers any failings in the criminal justice system during its remaining investigations.