

Young Defendants Pack: Scoping study

for

The Youth Justice Board

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ACKNOWLEDGEMENTS

The scoping study has been a thought-provoking and challenging exercise. The obstacles to young defendants' understanding of the criminal justice system, and the system's difficulties in engaging young defendants about their behaviour, are even greater than we first imagined.

This project was conducted between June and November 2002. We are indebted to all those who enabled us to complete the scoping study in such a short period of time. Our thanks are due to:

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- their parents
- the practitioners (Youth Offending Team members, prison officers, secure unit staff, solicitors, police officers, magistrates and others)
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Dr Neal Hazel, Policy Research Bureau, kindly shared with us the preliminary findings of his study *'Young offenders' perceptions of their experiences in the criminal justice system'*.

EXECUTIVE SUMMARY

This report describes a scoping study carried out between June and November 2002 on behalf of the Youth Justice Board, Home Office, Lord Chancellor's Department and the NSPCC. The main objective of the scoping study was 'to identify the information required by young defendants to inform them about the procedures and experience of being in court with a view, if feasible, to the procurement of a Young Defendants Pack which will assist young defendants understand and participate in the court process'. The study was also asked to address key issues facing young defendants in court and to suggest improvements to the way in which they and their parents are treated and informed.

As a consequence of the ECHR ruling in *T and V v UK*¹, the Lord Chief Justice issued a Practice Direction² detailing steps to minimise the formality of young defendants' Crown Court trials and to enhance their participation. Guidance to the youth court³ extended the principles of the Direction, encouraging magistrates to 'ensure that all concerned understand what is happening' coupled with a new duty to promote 'efforts to increase the level of engagement with young people and their parents'. The Pack is intended to complement these efforts.

Around 140 people were interviewed during the study. The concept of the Pack was welcomed by nearly all of them. Although some criminal justice practitioners felt that the stereotypical young defendant did not deserve any additional help, most agreed that the objective of preventing re-offending cannot be achieved unless the court process can be made a more meaningful experience for those going through it. Young people who feel alienated from the court will be harder to engage in efforts to prevent re-offending.

Young defendants' experience of the court process

At a superficial level, many young defendants do not appear to have a problem understanding the court process. They do not ask questions or admit to gaps in their knowledge, and they often agree with what is put to them in court. However, the scoping study found that:

- disinterest, hostility and bravado often mask developmental delays, literacy and communication problems, attention deficits, anxiety, depression and substance abuse
- a high proportion of young defendants have significant primary (speech and comprehension) and secondary (literacy and numeracy) communication difficulties

¹ (1999) 30 EHRR 121.

² Practice Direction (Crown Court: Trial of children and young persons) [2001] 1 Cr.App.R. 483.

³ Home Office and Lord Chancellor's Department (2001) Good Practice Guide '*The Youth Court 2001 – the Changing Culture of the Youth Court*'.

- young defendants, including repeat offenders, are often confused about what happens in court and at other stages in the legal process
- many can take in information about the legal process only in ‘bite size chunks’ before each stage
- many do not think they are entitled to be heard in court
- many actively disengage from what is going on in court
- many do not understand the decisions of the court before they leave the courtroom. For those remanded in custody, this is a significant cause of heightened anxiety.

The wider context

The Lord Chief Justice’s Practice Direction and associated guidance focuses on assisting young defendants by modifying procedures in the courtroom. The scoping study suggests that the present system often falls far short of ensuring young defendants’ effective participation because it does not prepare them adequately *before* they enter the courtroom. A Young Defendants Pack could assist in bridging the gap. Increasing effective participation will, however, require a raft of measures, of which the Pack would be only one plank. Some of the overarching questions emerging from the study include:

- has the Practice Direction and associated guidance had the impact intended?
- how can awareness be raised within the criminal justice system about young defendants’ lack of understanding of the process (even for some repeat offenders), their communication difficulties and the importance of preparation for court without this being interpreted as being ‘soft on persistent young offenders who already understand the system inside out’?
- how can such information be communicated to the court in individual cases? This is relevant to decisions to modify procedures in accordance with the Practice Direction. It also underpins the government proposal to give the Crown Court the right to decide trial venue ‘based on... the maturity and responsibility of the young co-defendant’⁴
- who should give those young defendants who have not previously been to court a familiarisation visit to the courtroom, as this falls outside the responsibility of the Witness Service?

⁴ Summary ‘*Justice for All*’ (2002) Annex 1.

- does the judiciary have inherent discretion to extend Special Measures to vulnerable young defendants?
- how can access to Pack materials can best be accommodated within court timetables which expedite youth cases?
- do adverse consequences outweigh the advantages of routinely requiring all young defendants to attend at the start of the court sitting?
- what is the relationship of Pack materials to the Citizenship programme in the National Curriculum for Schools?
- are there any circumstances in which solicitors will be entitled to an additional legal aid payment for time spent in using the Pack with young defendants?

Helping young defendants to use the Pack

Interviewees and those attending the Home Office seminar on 30 September concluded that Young Defendants Pack materials should be used, wherever possible, with the assistance of someone who can check the young person's level of understanding, correct misconceptions and answer any questions. Those who have a limited role in informing young defendants about the criminal justice process include an Appropriate Adult at the police station, the defence solicitor, staff at YOIs or secure units and YOT members.

There is a 'duty gap' in which no organisation or group has specific responsibility to prepare young defendants for court. Weaknesses of current arrangements include the following:

- practice varies and most of the help on offer is limited in scope
- solicitors' views vary in respect of their responsibility to prepare young clients for court, in part because the scope of legal aid payments for preparation is unclear
- YOTs, who seem best placed to take on preparation work, do not see contact with unconvicted defendants in the community as part of their core responsibility
- YOTs have difficulty in fulfilling their current obligations to visit those remanded in custody as quickly as required (only three out of 10 YOIs and eight out of 17 secure units in our sample thought that YOT workers visited more than two-thirds of those on remand)
- preparation for court is subordinated to children's contact with professionals for other purposes. As a result, assistance is not geared to the needs of the individual young defendant
- preparation work is not conducted according to any guidance or standards

- many young people, including ‘first-timers’ and those charged with the most serious offences, fall through the ‘preparation net’ altogether.

The findings also have implications for the training and funding of legal representatives. Defence solicitors are not required to specialise in youth court work, leaving some feeling marginalised by recent youth justice initiatives. Several commented that they were not trained to communicate with this target group. They were unclear to what extent preparation for court was covered under existing funding. Some young defendants (it is unclear how many) do not seek legal representation at the police station or before their first court appearance; we were told that some families may be unaware that legal advice is free. Increasing the proportion of young defendants who consult a solicitor before court would give legal representatives more opportunity to explain to them about the court process.

Following from discussions at the Home Office seminar on 30 September, it is suggested that:

- the Youth Justice Board should take lead responsibility nationally in coordinating delivery of the Pack
- local delivery should be coordinated by YOTs, though arrangements may vary (it was suggested that in some areas this service could be provided by trained volunteers)
- resources are allocated to ensure effective delivery of the Pack to young people. No YOT consulted during the study was in a position to undertake preparation work on a broader scale. This was also a problem for YOIs (not all of which had induction programmes) and secure units
- policy guidance for YOTs, YOIs and secure units should make clear where responsibility lies for preparation of young defendants, and which young people should receive priority assistance (it is suggested that these include those appearing in court for the first time; those remanded in custody; those sent to the Crown Court; and those identified at the police station as having particular communication and comprehension problems)
- solicitors are advised on the extent to which the preparation of the young defendant for court is covered by legal aid payments.

The subject matter of the Pack

There is a plethora of guidance of varying quality aimed at young defendants which would benefit from being brought together in a Pack, simplified and streamlined to highlight key messages. The Pack should make greater use of the language of ‘defendant’s rights’ than is the case at present. It should contain factual information on the following subjects:

- the rights of young defendants while detained at the police station
- what happens when they leave the station

- an explanation of the charge sheet (part of the 'Youth Justice' pack developed by the Metropolitan Police Service)
- the importance of obtaining legal advice before the first court appearance
- the consequences of the plea
- bail supervision and support available from YOTs on a voluntary basis
- going to court (covering the youth court, magistrates' court and Crown Court) including an explanation of roles, layout and procedures; the defendant's rights; appropriate behaviour and dealing with stress; advice that if you do not understand something you should say so; and guidance about speaking in court
- reports for the court
- court orders
- complaints procedures
- disclosure of a criminal record to prospective employers.

Parents have an important role in the youth justice system. There was widespread support among interviewees that the Pack include guidance for parents and carers about their own responsibilities and the key information to be passed to the young defendant. Parents were often confused about procedures. Where families had previous experience of the court system, it was often out of date. Guidance should address:

- the role of the Appropriate Adult at the police station
- seeking legal advice for the child (including the relationship between the child's solicitor and the parent)
- the need to draw attention to any special needs or communication difficulties the child may have
- going to court, emphasising the importance of the parent's presence
- court orders, including orders that may be imposed on the parent
- practical advice if a custodial sentence is a possibility or is imposed, for example about bringing medications to court, and where to obtain further information about the custody establishment
- support available on a voluntary basis from the YOT

- other sources of assistance.

Guidance for those assisting young defendants to use Pack materials is important because at present, preparation work is not conducted according to any guidance or standards. Some of those carrying out this work have no direct experience of the court process themselves. Guidance for them should be pilot tested and finalised after introduction of the Pack, in order to identify good practice strategies. It should contain advice on the following topics:

- constraints on the preparation role for those who are not legal representatives (including the importance of avoiding discussions with the defendant about the offence, plea, evidence or possible outcome)
- the circumstances in which the person preparing young defendants for court should convey information about their communication skills and level of understanding about the court process to the defence representative and court
- sources of information for those, such as prison officers and staff in secure units, who have not been to court themselves (for example, the Home Office leaflet '*Criminal Justice System: the Criminal Justice Process 'Who's Involved? Information'*)
- the objectives of the Pack
- identifying those who are a priority to receive Pack materials
- how the Pack may be incorporated into preparation programmes and other work with young defendants.

The choice of media

The materials in the Young Defendants Pack must be attractive and accessible. Video offers a strong way of reaching this difficult audience. While CD-ROMs and DVDs offer some advantages, access to the technology is limited. Conversion of Pack material to these media could be considered at a later stage, when account can be taken of lessons in introducing the initial Pack materials. It is suggested that the steering group consider the development of the following:

- a video (most probably drama) showing what happens at court focusing on rights, roles and the possibility that young defendants may be asked questions
- a more factual interactive tour of the courtroom explaining roles and procedures, to be shown on a touch-screen kiosk and available in a scaled down version on the Internet
- a series of illustrated information sheets for young defendants, allowing information to be selected according to the appropriate stage of proceedings and level of detail required
- guidance for parents and carers and for Appropriate Adults in the police station

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- guidance for those using the Pack to assist young defendants to prepare for court, to be developed following pilot use of the initial Pack materials
- versions of materials available in other languages.

Developing and distributing the Pack

A budget of approximately £100,000 to £150,000 will be required to develop the video for young defendants. This includes the costs of producing the 4,000 copies which, at a rough estimate, would be required. The development of a touch-screen kiosk with a virtual courtroom tour cost approximately £25,000 five years ago. A virtual courtroom tour on a website could cost between £15,000 to £30,000, depending on the features.

Economies would probably be achieved if the video, touch-screen and Internet components were developed together. Tendering companies could be invited to describe the extent to which material could be re-used or created as a package. The Judicial Studies Board and Lord Chancellor's Department may also wish to consider commissioning a training video for magistrates on 'engaging' young defendants which could combine some of the video for young defendants with interviews discussing good practice.

Much of the core information for the Pack's printed material already exists. Development costs would need to cover the creation of some new material but much existing text could be revised into a more user-friendly and perhaps illustrated format. Key messages and artwork from the Pack could form the basis of information posters for display in police stations, YOTs and court waiting areas.

Some printed materials could be re-used (they could be laminated to reduce wear and tear) but it is envisaged that most would be handed out. Large numbers would be required. Over 140,000 young people aged 10 to 17 were prosecuted in 2000. We have suggested that priorities for receiving preparation for court should include those appearing in court for the first time; those remanded in custody; those with communication or comprehension difficulties; and those attending the Crown Court. Around 5,000 youth cases were committed for trial in the Crown Court in 2000.

At present, YOTs develop, print and translate their own leaflets. The steering group will wish to consider whether Pack materials should be printed centrally and whether they should be made available on the Internet.

Some aspects of the Pack should be piloted. The guidance for those delivering its messages to young people should not be finalised until the most effective ways to carry out this work are identified. The use of a touch-screen kiosk in court waiting areas should also be the subject of a pilot exercise.

1 INTRODUCTION

1.1 Background to the study

In July 2000, speaking at the launch of a video to prepare young witnesses for court⁵, the Lord Chief Justice, Lord Woolf, called for a similar exercise to assist young defendants to understand and participate in the court process. Material exists for children in public law care proceedings⁶ and for adult defendants⁷ but nothing has been published for young defendants since 1985.⁸

In September 2001, the Michael Sieff Foundation conference on ‘The Needs of offending Children’⁹ recommended that the system provide ‘a child defendant’s pack to inform him about court procedures and his human rights as a defendant’. This recommendation was endorsed by the Lord Chief Justice in April 2002.¹⁰

In May 2002, a team led by Joyce Plotnikoff and consisting of Richard Woolfson, former probation officer Jill D’Adhemar, barrister Dr Emily Henderson, former Crown Prosecution Service solicitor Deborah Turnbull and child psychologist Dr Clare Wilson was commissioned by the Youth Justice Board to conduct a scoping study for the development of a ‘Young Defendants Pack’, along the lines of the NSPCC Young Witness Pack.

The project was funded jointly by the Board, Home Office, Lord Chancellor’s Department and the NSPCC. The steering group also included independent expert Baroness Valerie Howarth and representatives of the following organisations: Crown Prosecution Service, Department of Health, Justices’ Clerks’ Society, NACRO, Barnardos, National Children’s Bureau, NCH, Children’s Society, Law Society and the Magistrates’ Association.

The study was carried out between June and November 2002.

⁵ The video ‘*Giving Evidence: what’s it really like?*’ is part of the NSPCC/ ChildLine Young Witness Pack (1998). It includes booklets for different ages and developmental stages addressing types of court, ways of giving evidence and the rules about answering questions. There is also a booklet for parents and carers.

⁶ The ‘*Power Pack*’ developed by the NSPCC, the Children and Family Court Advisory and Support Service, the Rights of Children Group (Birmingham) and Warwick Law School (June 2001).

⁷ ‘*Pleading guilty or not guilty*’ Trials Issues Group (1996); ‘*Defendants in the Crown Court*’ Court Service (1998).

⁸ Children’s Legal Centre ‘*Going to Court*’ a four-page information sheet about the juvenile court aimed at young people and their advisers.

⁹ Cumberland Lodge Conference 5-7 September 2001.

¹⁰ Keynote speech to the Michael Sieff Foundation seminar ‘*Child Defendants – is the law failing them?*’ 23 Essex Street Chambers, London, 25 April 2002.

1.2 The objectives of the study

The main objective of the scoping study as stated by the Youth Justice Board ‘is to identify the information required by young defendants to inform them about the procedures and experience of being in court with a view, if feasible, to the procurement of a Young Defendants Pack which will assist young defendants understand and participate in the court process’.

The project specification identified issues that concerned both the development of the Pack and also the wider context in which it might be used. The following table lists the requirements of the scoping study and identifies where each issue is addressed in the report.

Table 1: Scoping study requirements

<i>Issues concerning the Pack</i>	Chapter
what young defendants say would help them be better informed about courts, what support they most need and how they feel about the court process	3,5,8
the range of materials required	8, Table 3
key messages and appropriateness of materials taking account of differing ages, gender, learning abilities, diversity and language	5-7
the views of defence solicitors, police officers, Appropriate Adults at police stations, and YOT representatives and what they consider the most appropriate and accessible delivery methods	4,8
how the material would be used (including for those held on remand) and the stages at which it should be available	8, Table 4
who is best placed to provide information about the court process to the young person and their parents	4
examples of draft materials	5-7
Development, timetable and distribution	9
<i>The broader context</i>	
key issues facing young defendants appearing in court	2
improvements to the way in which young defendants and their parents and carers are treated and informed	2
how limitations on young defendants’ participation as recognised by the ECHR in <i>T and V v UK</i> might best be addressed	2,5
impact of the Pack on the organisations and groups involved	4
possible changes to the procedure for committing young defendants to the Crown Court	2

In September 2000, the Home Office Minister Keith Bradley announced that the government would publish practice guidance on the provision of therapeutic help to young defendants. This was intended to be the subject of public consultation in 2002 and the scoping study was expected to refer to the draft guidance. No draft has been circulated and we are therefore unable to comment on the implications of such guidance for the Pack. However, it is likely that, when it

appears, the guidance will distinguish the objectives of therapy and preparation for court as does similar guidance on therapy for young witnesses.¹¹

1.3 Methodology

Over 130 interviews were conducted around the country with young defendants who had been convicted by the youth court and Crown Court; the staff of Youth Offending Teams (YOTs), Young Offender Institutions (YOIs) and secure units; police officers; parents; magistrates; Appropriate Adults; defence solicitors; representatives of a range of voluntary organisations; and speech and language therapists.

We had hoped to obtain the views of between 75 and 100 young defendants. While most of the YOTs, YOIs and secure units were extremely helpful in arranging interviews with young people, some YOTs took a long time to indicate that they did not wish to participate. Several indicated that they had been overwhelmed with recent research requests requesting access to young defendants. By the end of the study, we had conducted 65 individual or group interviews with young defendants between the ages of 12-18 in custody or in the community, at eight different locations around the country. Eleven were female. Approximately one-quarter were from ethnic minority groups; all were English speakers.

We had hoped that YOTs would allow us to speak to parents' groups about their information needs. Although some YOTs thought that this would be possible, no opportunities materialised. Ultimately we were only able to speak to four parents.

Survey questionnaires were distributed on our behalf to young people by the Children's Society; to solicitors by the London Criminal Courts Solicitors Association and the Criminal Law Solicitors Association; and to YOIs by the Prison Service. We sent questionnaires to all local authority secure units which we did not visit.

On 30 September, the Home Office hosted a seminar chaired by Bob Ashford, Head of Prevention at the Youth Justice Board. This was attended by over 40 practitioners, representatives of relevant organisations and policy-makers. Questions arising from the scoping study fieldwork were discussed. The helpful input from the seminar is reflected in this report.

During the course of the study, Bob Ashford emailed YOTs and also placed an item in the 'Youth Justice Board News' asking on our behalf for examples of locally developed information leaflets. The contents of these are discussed in the report.

¹¹ Crown Prosecution Service, Department of Health and Home Office (2001) *Provision of therapy for child witnesses prior to a criminal trial: practice guidance*.

The breakdown of interviews conducted and questionnaires received is set out in the following table.

Table 2: Work undertaken during the scoping study

Category	Interviews	Questionnaires/postal surveys
Young people in: 4 YOIs 1 Secure Unit 3 YOTs Children's Society schemes	39 (5 girls) 10 (4 girls) 16 (2 girls)	6
YOT staff	18 (11 YOTs)	
YOI staff	4 (4 YOIs)	6 YOIs
Secure unit staff	4 (3 secure units)	14 secure units
Police	6 (4 from YOTs and 2 from custody officers)	
Parents	4	
Magistrates	10 (9 of whom chair youth panels)	
Appropriate adults	5	
Defence solicitors	9	4
Others	12 (Children's Society, NACRO, Howard League, Voice for the Child in Care, independent social worker, speech and language therapists)	
Total:	137	30

2 KEY ISSUES FACING YOUNG DEFENDANTS IN COURT

2.1 Introduction

The criminal justice system has international and domestic obligations to observe the rights of young defendants. This chapter considers what these obligations mean for young defendants in court. It goes on to explore the wider context in which the Young Defendants Pack would be used. Lessons can be learned from ways in which the criminal justice system has modified procedures on behalf of young witnesses in recent years.

2.2 Rights

The rights of defendants are expressed as both domestic and international obligations. A key objective for the criminal justice system agreed by the Home Secretary, Lord Chancellor and Attorney General¹² is to ‘respect the rights of defendants and treat them fairly’, which places a responsibility on all those involved to ‘ensure that defendants understand the legal process and its outcomes’.¹³

The young defendant has a right not just to understand but also to participate. Article 12 of the UN Convention on the Rights of the Child states that:

‘Children too have the right to say what they think about anything which affects them. What they say must be listened to carefully. When courts or other official bodies are making decisions which affect children they must listen to what the children want and feel’.¹⁴

The defendant’s effective participation in the trial is an essential requirement of Article 6 of the European Convention on Human Rights. The implication of this right for young defendants was addressed by the European Court of Human Rights (ECHR) in *T and V v UK*.¹⁵ The ECHR found that the Crown Court procedures as modified for eleven-year-old defendants in 1993 did not go far enough:

‘It is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings’.

¹² Objective 7 of the Criminal Justice System Public Service Agreement 2001-2004.

¹³ See Audit Commission ‘*Route to Justice – improving the pathway of offenders through the criminal justice system*’ (2002) p. 66.

¹⁴ Department of Health and the Children’s Rights Development Unit (1993) ‘*A Guide to the UN Convention on the Rights of the Child*’.

¹⁵ (1999) 30 EHRR 121.

Limitations on the young defendants' effective participation recognised by the ECHR included their inability to follow the trial, instruct lawyers, take decisions in their own interests and give evidence.

2.3 Guidance to encourage young defendants' participation

As a consequence of the ECHR ruling, the Lord Chief Justice issued a Practice Direction¹⁶ detailing steps to minimise the formality of young defendants' Crown Court trials and to enhance their participation. It recommended that:

- the court should explain the proceedings to a young defendant
- legal representatives be reminded of their continuing duty to explain each step of the trial
- so far as practicable, the trial should be conducted in language which the defendant can understand.

Guidance to the youth court¹⁷ extended the principles of the Direction, encouraging magistrates to 'ensure that all concerned understand what is happening' coupled with a new duty to promote 'efforts to increase the level of engagement with young people and their parents'.¹⁸ The Judicial Studies Board designed a training package for magistrates, delivered locally, to introduce the new measures and promote 'engagement'.

2.4 Communicating with young defendants

The second objective of the youth justice system is to confront young offenders with the consequences of their offending for themselves, their victims and the community and help them to develop a sense of responsibility.¹⁹ Pressures on young defendants to participate in the process are increasing not only through magistrates speaking to them directly but also through referral panel procedures and restorative justice disposals.

The emphasis on 'engagement', while increasing young defendants' opportunities to participate, has also inadvertently set a higher threshold. The scoping study found that most young people felt actively discouraged from speaking up in court and it was likely that many lacked the communication skills to do so. At the Home Office seminar on 30 September, practitioners warned that, without prior preparation and support of young defendants, well-

¹⁶ Practice Direction (Crown Court: Trial of children and young persons) [2001] 1 Cr.App.R. 483.

¹⁷ Home Office and Lord Chancellor's Department (2001) Good Practice Guide *'The Youth Court 2001 – the Changing Culture of the Youth Court'* based on *'Evaluation of the Youth Court Demonstration Project'* (Home Office research study 214). The Judicial Studies Board's *'Youth Court Bench Book'* (2001) includes material on engaging young defendants.

¹⁸ One chair of a youth bench thought that engagement extended to young defendants only, not their parents.

¹⁹ Youth Justice Board *'Basic Skills Toolkit for YOTs: Basic Skills'* (2002), p. 10.

meaning attempts to ‘engage’ them in the courtroom would heighten stress and could have the opposite effect to that intended. The end result may be that some young people feel even more disengaged by a court process intended to draw them in.

The Practice Direction and youth court guidance focused on what could be done in the courtroom to enable young defendants to follow the proceedings. In light of the findings of the scoping study about young defendants’ poor level of understanding and communication difficulties, guidance needs to be extended to encourage preparation of young defendants before they enter the courtroom. Also, if engagement is to be meaningful, magistrates and judges need to have greater awareness of defendants’ communication problems and how to accommodate them.

2.5 Learning from experience with young witnesses

In the past decade, the criminal justice system has undergone a steady ‘learning’ curve in recognising the difficulties confronting young witnesses called to give evidence and the prior planning necessary to accommodate their needs at court. A number of messages relevant to young defendants can be ‘read across’ from the system’s experience with young witnesses, for example:

- young people’s general lack of knowledge and misunderstanding of the legal process
- additional difficulties faced by those with special needs, from ethnic minority groups or those for whom English is not their first language
- the court’s need for advance information about young defendants’ level of understanding and concentration span²⁰
- the adverse consequences of having children wait for a long time at court
- feelings of stress and intimidation in court and the waiting area adversely affect children’s powers of concentration and communication²¹
- the need for training for all those involved, including the judiciary, in adapting court procedures to the needs of children, for example in checking their understanding of the ‘rules’ for answering questions.

²⁰ Court Service form ‘*Plea and Directions Hearing: supplementary pre-trial checklist for cases involving young witnesses*’ endorsed by the Lord Chief Justice.

²¹ Speech and language therapists advised us that the atmosphere of the physical environment can help or hinder the communication abilities of young defendants.

One of the lessons from young witnesses is the difficulty of preparing them for an approach which varies from court to court. As yet, there has been no evaluation of the effectiveness of the Practice Direction and youth court guidance in enabling young defendants to follow and participate in their cases, but practitioners suggested that the extent to which the messages had been taken on board varied widely among youth courts and between Crown Court centres.

Those working with young witnesses and young defendants emphasised the value of a familiarisation visit to the courtroom for those who had never been in court before. The Home Office has explained that the Witness Service, which offers this to witnesses, cannot perform the function for young defendants. Nor is it a routine part of the defence solicitor's duties. There needs to be consideration of who should offer this important service to young defendants.

2.6 Preparing young defendants for court within the expedited youth justice timetable

The government's commitment to halve the time from arrest to sentence for persistent young offenders means that the first court hearing is usually between two and eight days after charge. We were told that a large number of young defendants do not have legal advice or representation in the police station; many do not seek legal advice until the first hearing, and a few may not have representation even then.

Opportunities and time available to distribute Pack materials to young defendants before court are very limited. There are no obvious solutions to this problem. Creative strategies are needed and these are likely to require some flexibility on the part of the youth justice process. It is suggested that pilots be conducted to identify the most effective strategies for identifying those young defendants most in need of preparation for court and for delivering Pack materials.

At present, most young defendants are required to attend at the start of the youth court sitting. This allows those who have not previously sought legal representation to see the duty solicitor. However, it runs counter to the lessons learned about young witnesses, for whom attendance is staggered in order to minimise waiting time before the hearing. Long waits at court (seen as part of the 'punishment' by Neal Hazel's young defendants²²) affect young people's stress levels and concentration and increase the potential for intimidation and other problems in court waiting areas.

²² *'Young offenders' perceptions of their experiences in the criminal justice system'* (2002) Policy Research Bureau (unpublished).

2.7 Vulnerable young defendants

The research summarised in the next chapter suggests that there may be a significant number of vulnerable young defendants in the system. There is uncertainty concerning their eligibility for Special Measures which modify procedures to make the court process less intimidating.²³ Although the Youth Justice and Criminal Evidence Act excludes defendants from eligibility for Special Measures,²⁴ Judicial Studies Board guidance emphasises the court's responsibility to accommodate the special needs of all those appearing, including defendants. The appearance of 'a child or young person – as a victim, witness or defendant – requires particular procedures to be followed'.²⁵

The Senior Presiding Judge for England and Wales, Lord Justice Judge, considers that judges have inherent discretion²⁶ to use Special Measures on behalf of vulnerable defendants. The specification for a video on vulnerable witnesses being commissioned by an inter-agency group chaired by the Bar Council addresses this issue. The video may include a statement from a senior judge explaining that judges have inherent discretion to apply Special Measures to vulnerable defendants, even though they are not covered by the legislation. Clarity on this point is important for the Pack's contents.

2.8 Lord Justice Auld's recommendations

The specification required the study to take account of possible changes to the current procedure of committing young people to the Crown Court for trial or sentence. Lord Justice Auld has recommended that:

- all cases involving young defendants who are presently committed to the Crown Court for trial or sentence should in future be put before the youth court consisting, as appropriate, of a High Court judge, circuit judge or Recorder sitting with at least two experienced magistrates and exercising the full jurisdiction of the present Crown Court

²³ Speaking at the Michael Sieff Conference on 25 April 2002, Vera Baird QC, MP discussed a Crown Court case in which such an application was successful although the young defendant ultimately felt too intimidated to give evidence.

²⁴ Section 19(1)(a). Critics see this as susceptible to challenge under the equality of arms provisions of Article 6 of the European Convention of Human Rights. Laura Hoyano 'Striking a Balance between the Rights of Defendants and Vulnerable Witnesses: Will Special Measures Directions Contravene Guarantees of a Fair Trial?' [2001] Crim.LR 948-969; Diane Birch 'A Better Deal for Vulnerable Witnesses' [2000] Crim.LR 223-249.

²⁵ 'Equality before the Courts - A Short Practical Guide for Judges' (2001) pp. 5, 11.

²⁶ The Act recognises this discretion: Section 19(6)(a) states that 'Nothing in this Chapter is to be regarded as affecting any power of a court to make an order or give leave of any description (in the exercise of its inherent jurisdiction or otherwise) in relation to a witness who is not an eligible witness'.

- the only exception should be those cases where the young defendant is charged jointly with an adult and it is considered necessary in the interests of justice for them to be tried together
- the youth court so constituted should be entitled, except where public interest demands otherwise, to hear such cases in private, as currently happens in the youth court.²⁷

The government has invited views as to whether the Crown Court should retain the discretion to try 16 and 17 year olds and young people when there are adult co-defendants.²⁸ Options considered include:

- as now, trying the youth with their adult co-defendant in the Crown Court
- providing for them to be tried together in the strengthened youth court
- giving the Crown Court the right to decide the venue for the trial at a preliminary hearing, based on the interests of justice and the maturity and responsibility of the young co-defendant.

Judging from the comments of both defendants and practitioners, the Lord Chief Justice's Practice Direction has resulted in little alteration to the conduct of young defendant cases in the Crown Court. Most young people found the formality of Crown Court procedures much more confusing and stressful than the youth court. The government's preferred option is giving the Crown Court the right to decide the trial venue 'based on the interests of justice and the maturity and responsibility of the young co-defendant'. At present, there are no mechanisms in place to assess 'the maturity and responsibility' of young defendants or to communicate this information to the court. It is desirable that such mechanisms be developed, to ensure that the Crown Court is made aware of factors indicating the importance of modifying procedures according to the Practice Direction or making a Crown Court trial inappropriate.

2.9 Findings and recommendations

The Lord Chief Justice's Practice Direction and associated guidance focuses on assisting young defendants by modifying procedures in the courtroom. The scoping study suggests that the present system often falls far short of ensuring young defendants' effective participation because it does not prepare them adequately *before* they enter the courtroom. A Young Defendants Pack could assist in bridging the gap. Increasing effective participation will, however, require a raft of measures, of which the Pack would be only one plank. Some of the overarching questions emerging from the study include:

²⁷ Recommendations 48-50, 'Review of the Criminal Courts of England and Wales' (2001).

²⁸ Summary 'Justice for All' (2002) Annex 1.

- has the Practice Direction and associated guidance had the impact intended?
- how can awareness be raised within the criminal justice system about young defendants' lack of understanding of the process (even for some repeat offenders), their communication difficulties and the importance of preparation for court without this being interpreted as being 'soft on persistent young offenders who already understand the system inside out'?
- how can such information be communicated to the court in individual cases? This is relevant to decisions to modify procedures in accordance with the Practice Direction. It also underpins the government proposal to give the Crown Court the right to decide trial venue 'based on... the maturity and responsibility of the young co-defendant'²⁹
- who should give those young defendants who have not previously been to court a familiarisation visit to the courtroom, as this falls outside the responsibility of the Witness Service?
- does the judiciary have inherent discretion to extend Special Measures to vulnerable young defendants?
- how can access to Pack materials can best be accommodated within court timetables which expedite youth cases?
- do adverse consequences outweigh the advantages of routinely requiring all young defendants to attend at the start of the court sitting?
- what is the relationship of Pack materials to the Citizenship programme in the National Curriculum for Schools?
- are there any circumstances in which solicitors will be entitled to an additional legal aid payment for time spent in using the Pack with young defendants?

²⁹ Summary '*Justice for All*' (2002) Annex 1.

3 YOUNG DEFENDANTS' EXPERIENCE OF THE COURT PROCESS

3.1 Introduction

This chapter summarises the lessons from research about young defendants' understanding of the court process and the prevalence of communication problems in the Pack's target audience. It also describes how the court process is experienced by young defendants, and reports interviewees' views about the extent to which the court system takes account of their difficulties.

3.2 Lessons from research

In a paper for the Michael Sieff Foundation in September 2001, we summarised research from the United States, Canada, Australia and South Africa demonstrating the problems common across jurisdictions of young defendants' limited understanding of the criminal justice process. Relevant findings include the following:

- children's knowledge of criminal courts is 'extremely peripheral and often misleading'. Juvenile offenders do not understand what a trial entailed and confuse it with other procedures, including imprisonment³⁰
- the presumption that persistent young offenders are more likely to understand legal matters is not borne out.³¹ Youths involved in the legal system may even demonstrate poorer understanding of legal concepts than those with no such experience³²
- competence to instruct the defence lawyer does not lie solely with the young client but in the interaction between lawyer and client: 'fitness, to a considerable degree, can be taught'³³
- defendants' satisfaction with their legal representation and their ability to 'have their say' relate strongly to their judgment of fairness of the court process and the outcome³⁴

³⁰ K. Muller and K. Hollely (2001) "*I just want to go home*": *Juvenile offenders and their perceptions of the legal process*' (unpublished).

³¹ M. Peterson-Badali and Rona Abramovitch '*Children's knowledge of the legal system: Are they competent to instruct counsel?*' *Canadian Journal of Criminology* April 1992 pp.139-160.

³² K. Saywitz and C. Jaenicke (1987) '*Children's understanding of legal terminology*'. Presented at the annual meeting of the Society for Research on Child Development, Baltimore Maryland: Thomas Grisso (1981) '*Juveniles' waivers of rights: Legal and psychological competence*'. New York: Plenum Press.

³³ R. Roesch, C. Webster and D. Eaves (1984) '*The fitness interview test: A method for examining fitness to stand trial*' Centre of Criminology, University of Toronto and Criminology Research Centre, Simon Fraser University, Canada.

- young defendants often have trouble separating the defence lawyer's function from court authority³⁵
- ignorance about the lawyer's duty of client confidentiality is widespread among young people³⁶
- children think of a legal right as 'conditional' - something that authorities allow them to have, but which can also be withdrawn³⁷
- most young people, including teenagers, think that once charged a defendant must prove his or her innocence of a crime³⁸
- until late adolescence, youths often minimize perceived risks. Young adolescents are even less likely to focus on longer-range consequences. This has implications for young defendants' decision-making in the legal process, for example in failing to foresee the consequence of waiving legal rights.³⁹

UK research relating to young witnesses⁴⁰ has demonstrated their lack of knowledge and the extent of their misunderstandings of the legal system, but until recently young defendants' knowledge has not been the focus of research. However, a study entitled has recently been completed by Dr Neal Hazel and colleagues at the Policy Research Bureau.⁴¹ Dr Hazel found that young defendants were often confused about what happens in court and also about the process at the police station, at sentencing and at entry into custody.⁴² This frequently led to feelings of isolation and marginalisation; distress about speaking in court, because they did not understand their role; frustration at not being able to correct what they saw as 'lies' about

³⁴ J. Cashmore and K. Bussey (undated unpublished paper) '*Children's perceptions of court outcome and the associated decision-making process in Children's Court criminal cases*' School of Behavioural Sciences, Macquarie University, Australia.

³⁵ T. Grisso (1997) op. cit.

³⁶ M. Peterson-Badali and R. Abramovitch op. cit.

³⁷ T. Grisso (1997) op. cit.

³⁸ M. Peterson-Badali and R. Abramovitch (1992) op. cit.

³⁹ T. Grisso (1997) op. cit.

⁴⁰ R. Flin, Y. Stevenson and G. Davies (1989) '*Children's knowledge of court proceedings*' British Journal of Psychology, 80, pp. 285-297. See also American research: Karen Saywitz (1989) '*Children's conceptions of the legal system: "Court is a place to play basketball"*' in S.J. Ceci, D.F. Ross and M.P. Toglia (eds.) *Perspectives in Children's Testimony*. New York: Springer Verlag.

⁴¹ '*Young offenders' perceptions of their experiences in the criminal justice system*' Dr Neal Hazel, Senior Research Fellow, and Research Fellows Laura Brazier and Ann Hagell (unpublished). This study was funded by the Economic and Social Research Council. It consisted of an international research review and in-depth interviews with 36 offenders aged between 12 and 17 years old from London and South East England. Interviews were also conducted with the offenders' youth justice workers and their case files were examined.

⁴² Summarising his findings at the Home Office seminar on 30 September 2002.

them in court; resentment towards the bench; and alienation from those later required to supervise them. Most were unclear as to whether they had any legal rights or what these rights were.

Dr Hazel concluded that young people's lack of understanding and the associated confusion and distress not only limited their ability to 'engage' but were also likely to confound the aims of the criminal justice system. Young people who felt alienated from the court would be hard to engage in efforts to prevent re-offending. Their inability to participate in the legal process also heightened risks of miscarriages of justice.

3.3 The prevalence of communication difficulties in the target audience

Important lessons for the design of the Pack can be drawn from studies of prisoners' competencies (we are unaware whether there is comparable analysis of data from ASSET forms concerning young offenders). One in two prisoners has literacy difficulties compared to one in six of the general population.⁴³ Around 40 per cent of young people screened at induction into custody in 11 YOIs had numeracy and literacy levels of a seven year old or lower.⁴⁴ A survey of young people in six establishments found that 86 per cent had truanted from school; 84 per cent had been excluded; 73 per cent said they had no educational achievements; and 52 per cent had left school at 14 or younger.⁴⁵

Within the court system, there is increasing awareness that many young defendants have literacy problems. The practitioners and magistrates we interviewed were aware of the limitations of written material on its own to impart information and of the importance of not assuming that young people could read, for example, their statement, the oath or court orders. However, there may not be sufficient appreciation of the connection between 'secondary'⁴⁶ reading and writing problems and even more significant difficulties. Young defendants with poor receptive and expressive language skills have difficulty in understanding, processing and retaining information they are given and in organising their responses.⁴⁷

In a sample of 30 young prisoners screened by a speech and language therapist⁴⁸, 37 per cent had severe literacy problems but all had significant difficulties with speech, language and communication. Fifty per cent of the sample suffered from substance-induced memory loss⁴⁹;

⁴³ Basic Skills Agency (1994) *'Basic Skills Agency in Prisons: Assessing the Needs'*.

⁴⁴ Thematic Review by HM Inspectorate of Prisons (2001-2002) *'A Second Chance: a review of education and supporting arrangements within units for juveniles managed by HM Prison Service'*.

⁴⁵ Op. cit.

⁴⁶ Shirley Johnson (1992) *'A Review of Communication Therapy with Young Male Offenders'* YOI Polmont, Scotland. November 1972 to March 1992; Addendum April 1992 to March 1994.

⁴⁷ *'Report on the communication status of young offenders and juveniles'* (2000) Symbol UK.

⁴⁸ HM Chief Inspector of Prisons *'HM YOI Swinfen Hall Report of an Announced Inspection'* (November 2000).

⁴⁹ Only 11 per cent of young prisoners surveyed by HM Inspectorate of Prisons said they had never used drugs: (2001-2002) Thematic Review op. cit.

17 per cent reported hearing difficulties (possibly an underestimate as hearing was not tested independently)⁵⁰; and 43 per cent reported difficulty in communicating by talking. Although those with learning difficulties had some of the most challenging problems, others were equally communication-impaired.⁵¹

YOI Polmont in Scotland is a prison unique in the UK in using self-reporting data to screen the communication skills of all offenders detained for more than three months.⁵² Polmont's findings over many years show that at 10-20 per cent of those screened have significant problems with speech, language and communication. A speech and language therapy pilot study in an English YOI identified 'high levels' of functional communication problems.⁵³ This compares with 3 per cent of people in the general population who are estimated to have speech, language or communication problems sufficient to affect everyday functioning.⁵⁴

3.4 'Tuning out' instead of 'tuning in'

NACRO told us that:

'Many young people who have been through a court appearance leave without remembering a single thing which happened. This is partly due to stress but also due to the formality of court procedure and the fact that much of it will not be normally within the young person's comprehension'.

Some young people in Dr Hazel's study spoke of nodding in court 'because that's what's expected', without necessarily understanding the questions.

These observations were borne out in our interviews. Stress caused by lack of understanding was compounded by delays at court (Dr Hazel feels that 'having to wait' is seen as part of the punishment and was identified by many of our interviewees as one of the most stressful things about court). It is not surprising that many described their behaviour in ways that graphically illustrated their active disengagement from the court process. At one extreme, young people told us of getting drunk or taking drugs in order to 'get through' a hearing (a significant proportion of the young people we spoke to admitted having substance abuse

⁵⁰ About 25,000 people in the UK are deaf but around 7m have a medical hearing loss: Centre for Deaf Studies, University of Bristol. Devices to assist people at court who are deaf or hard of hearing include induction loops and an infra-red system which, subject to compatibility of hearing aid devices allows headphones to be plugged in to facilitate hearing (occasionally used by magistrates as well).

⁵¹ In England about 1.2m people have a mild or moderate learning disability and 210,000 have a severe or profound learning disability: '*Behind Closed Doors*' VOICE UK, Respond and Mencap (2001).

⁵² Reading and writing are described as 'secondary linguistic skills': Shirley Johnson (1992) '*A Review of Communication Therapy with Young Male Offenders*' YOI Polmont, Scotland. November 1972 to March 1992; Addendum April 1992 to March 1994.

⁵³ Symbol UK op. cit.

⁵⁴ P. Enderby and P. Davies (1989) '*Communication Disorders: Planning a service to meet the needs*' *British Journal of Disorders of Communication* pp. 221-236 at p. 31.

problems). Others spoke of being bored and not listening in court, or simply wanting to get court over with⁵⁵, something borne out by professionals in the courtroom:

‘The kids don’t understand the language in court and don’t ask questions: they are so passive in that environment. You can see the point where they glaze over. They say “yes” to a whole range of things but you know they don’t understand. All they want is to get out of there’ (YOT member).

Practitioners spoke of young people who were ‘less than observers at their own trials’; who were ‘almost completely detached from the court process’, and who ‘feel that court is something done to them and over which they have no control’.

3.5 Repeat offenders

There was general acceptance that those appearing in court for the first time needed extra help but some practitioners, including magistrates, presumed that persistent young offenders were more likely to understand legal matters. They found it difficult to look beyond the stereotypical, blasé attitude of juveniles which was interpreted as indicating that repeat offenders ‘know it all already’. Their views were sometimes coloured by the appearance of the defendant (for example, juveniles who looked physically mature), the severity of the offence and the previous criminal record. Because of this, they did not always consider or seek out information about the youth’s level of understanding.

The ‘expertise’ of repeat offenders is not borne out by this scoping study, Dr Hazel’s project or other research. A survey in Canada concluded that:

‘A common notion expressed by the public and popular press is one of the street-wise youth who manipulates the juvenile legal system with an experienced canniness in order to protect his or her interests. Certainly some youths will learn from such experiences and may even become quite sophisticated: others will learn nothing at all from the same type of experiences... *the mere fact that a youth is a repeat offender is not a reliable indicator of the youth’s understanding of the trial process and rights*’ (emphasis added).⁵⁶

Studies of youths repeatedly involved in the legal system in the United States actually demonstrated poorer understanding of legal concepts than those with no such experience.⁵⁷

Some practitioners in our study considered the repeat offender’s veneer of understanding was often paper-thin:

⁵⁵ Young adolescents are unlikely to focus on longer-range consequences: T. Grisso op. cit.

⁵⁶ M. Peterson-Badali and Rona Abramovitch op. cit.

⁵⁷ K. Saywitz and C. Jaenicke op. cit.

‘The main difference generally with repeat offenders is their expression of indifference to what is happening. This does not represent a greater degree of understanding, just that they show less interest in it. If we asked our regular repeat offenders about the main procedures and sentencing options, there would be very few who would show any real understanding’ (solicitor)

‘Repeat offenders are more blasé about court. Some of this is simply attitude. They appear more knowledgeable but often do not understand the process’ (solicitor)

‘Experienced ones don’t care’ (solicitor)

‘Sadly, no-one in my entire career has ever asked me questions about court, which shows how fatalistic many of the kids are. They feel they have absolutely no control over the court case and therefore they don’t ask for information’ (YOT member)

‘Kids have only a superficial understanding of the process. They may think they are invincible and will never go to prison. At the same time, they are very fatalistic – they believe that once something has gone wrong, there is no fixing it and they won’t try’ (YOT member).

Most of the 65 young people in our sample, nearly all of whom were repeat offenders, initially did not admit that there were things they did not understand about the court process. Many were full of bravado in discussing their court experiences, particularly those seen in groups who were reluctant to acknowledge any difficulties in front of others. Eventually, however, those seen individually and many seen in groups acknowledged a wide range of problems of understanding in the courtroom. They were heavily reliant on their solicitors’ interpretation afterwards of what had happened. Some were able to articulate that they wanted more things to be explained to them before court and in the courtroom without having first to ask for an explanation or to admit they did not understand.

We came across numerous examples of misunderstandings about court language and roles, for example the command ‘All rise’; confusion about roles in court, such as mistaking the robed usher for a judge; not understanding the purpose of the jury; and describing ‘cross-examination’ as ‘cross-contamination’.

These types of errors underlined the importance of checking on the defendants’ level of understanding and whether they have absorbed explanations.

3.6 Young defendants’ views about communicating with the court

The young person’s ability to express themselves in court is an important element of ‘engagement’ but was highly problematic for our interviewees. This was true whether they were responding to questions from the bench, wanted to say something on their own behalf or where they did not understand what was being said. A few juveniles thought it was best not to say anything in court:

‘It’s better to take it than to say something’

‘It’s best to say nothing even if you are asked’.

Many claimed not to have been told beforehand that there would be an opportunity to speak or that they could say if they did not understand something (though even this advice may not be sufficient to overcome their fears of doing so). Nearly all of the young people in our sample believed that they were not permitted to speak in the courtroom:

‘I have not been told I can say anything. I don’t know whether it’s allowed’

‘You cannot talk in court. Even if you have something really important to say, speaking is against the rules’

‘I thought I had no right to speak in court except to the solicitor. The solicitor told me to say if there was anything I didn’t understand. There were things, but I was too scared to say so in court’

‘No-one said you could ask a question. Because I was told to say “No comment” at the police station, I thought I couldn’t say anything at court’

‘You can’t speak, only to answer yes or no’.

Some had wanted to speak to the court but felt unable to do so:

‘We wanted to give evidence but didn’t because we were too scared’

‘I wanted to say something but wasn’t able to. They didn’t ask about my side of the story’

‘Every time I tried to speak, I was stopped’

‘They don’t ask why you did something’

‘You want to talk and you can’t. I wanted to speak because I hadn’t done [the offence] but I was told to sit down when I tried to stand up. There should be a time for us to speak. Trying to interrupt is too difficult’.

‘I was annoyed because I thought I would get a chance to speak and I didn’t. No-one asked if I wanted to talk’.

Several young people spoke of nerves and stress in the courtroom. For some, this was manifested by behaviour they knew was inappropriate but could not help, such as smiling or laughing. One boy’s advice to others was to ‘look at the floor’. Another said:

‘Expect to feel weird. You might laugh or talk back to the judge because you are nervous. But, if you do, the judge could punish you’.

3.7 Practitioners’ views about improved communication with young defendants

When the Judicial Studies Board Youth Panel Training was introduced, one magistrate was widely reported as saying that ‘Many of the magistrates found the word “engagement” puzzling’ and that the training was ‘a wearying waste of time’.⁵⁸

Some of our interviewees thought that ‘engagement’ in the courtroom as it occurs now was counter-productive:

‘Having to speak, although intended to help the children, actually puts more pressure on them and isn’t entirely helpful’ (YOT member).

There was also a tension between ‘engagement’ and the need to maintain the formal authority of the bench:

‘Some sort of discipline at the outset of proceedings may prevent further offending if they see the court as a horrible place to be. Although it has been far more relaxed in recent times, there are boundaries which need to be maintained’ (solicitor)

‘There are times when we try to make it less daunting but some defendants need to feel the weight of the formal process and we should be allowed the flexibility to do this. The Lord Chancellor’s Department is trying to make us too uniform for the sake of consistency’ (magistrate)

‘For a long time, we were discouraged from speaking to defendants. Now, we are encouraged to “engage” but in some cases it is inappropriate’ (magistrate).

While some individual magistrates were thought to have good engagement skills, many interviewees (including some magistrates) thought youth court benches needed more training and feedback.

‘Magistrates locally have a habit of talking to kids direct. This guarantees that kids will ruin it because they are nervous. Magistrates use the wrong language: they are too vague and the child doesn’t understand. Most of these kids are poorly educated and can’t cope with talking to magistrates in a formal setting. The magistrates then don’t get a proper idea of how the kids feel’ (solicitor)

⁵⁸ Paula Davies *‘The young need more help and magistrates less “engagement”’* The Times, 26 February 2002.

‘Magistrates cause misunderstandings: they tend to talk about, rather than to, children. When they do talk to them, they don’t do it well’ (YOT member)

‘Courts’ explanations are getting better but it is still not sufficient – young people are treated with little respect. Magistrates tell them to stand up or sit down or “don’t talk to us, talk to your solicitor”. They are treated as naughty children, and talked “to” not “with”. This has an enormously negative effect on the kids’ responses to the court: they treat it with corresponding disrespect. Children vary in their ability to handle talking in court. Overall the process is still too formal for children, even in the youth court’ (solicitor)

‘Direct attempts to draw the defendant into the process must be sensitive otherwise adverse consequences are possible. Further training is needed as sometimes ‘engagement’ leads to cross-examination of the young defendant by the magistrates. For example, in the case of a young teenage girl, I referred in mitigation to her disturbed state of mind when she broke up with her boyfriend. This led to a serious suicide attempt. When the magistrates spoke to her directly she was asked to agree that this was a stupid course of action and that there were “more fish in the sea”. Unsurprisingly, she was quite unable to respond to this line of questioning’ (solicitor)

‘The court process is still unintelligible for most defendants. The magistrates have had training on “engagement” but their manner can still be intimidating. Sometimes questions are inappropriate e.g. “Where’s your mother?” in a case where the mother was dead’ (YOT member)

‘It is appalling how bad magistrates are at explaining. They try, but their grasp of appropriate language is poor and the basic facts about the law are often wrong’ (YOT member).

A number of interviewees referred to the confusion caused by the use of jargon in court, including a magistrate who observed that ‘the charge itself is so complex that you have lost them before you start’. We were told of one youth bench which had developed a local bench guide⁵⁹ entitled ‘*Communicating with young offenders*’. This includes some appropriate questions, alternatives for legal jargon, simplified announcements and explanations of various orders. Before the bench retires to make a final decision, the Chairman asks if the defendant has anything to say, often prompting them by saying ‘Do you want to say sorry?’ The Chairman told us:

‘Once that hurdle is crossed, we generally glean a lot more information too. We do not just ask them if they understand something, we ask them to explain what they have just heard. You have to give them confidence they’ll be listened to’.

⁵⁹ Available in electronic form from John Pleeth JP who can be contacted at jpleeth@jayemm.freeserve.co.uk.

One YOT reported helping to prepare magistrates to speak to young defendants. A number of YOT members and solicitors advised young people and their parents ahead of time to think about what they might want to say to the court:

‘I advise children and parents that the magistrates will often want to speak to them directly as it is important that they are not ambushed. This is particularly important with teenage boys who may be just at the “grunt stage”. When they are asked questions by the magistrates they should be prepared, even if it is just to say that they are sorry. They often do not want to say anything, but if I talk to them about this before they are usually able to say something. Sometimes kids can be really good and I have known them to influence magistrates’ decisions by being able to speak. This applies also to parents. If they are aware of this in advance, they can go through in their head what they might want to say’ (solicitor).

As noted above, many young people were unaware that that they might have the opportunity to speak to the court and thought that it would be helpful to have time beforehand to consider any questions or anything they wished to say. However, for most there would still be a huge barrier to overcome before they saw themselves in a participatory role.

The system still relies heavily on the solicitor or YOT member explaining the decisions of the bench when the young person comes out of court. This is particularly unsatisfactory when the young person is remanded in custody. YOIs and secure units reported that many arrive in a state of confusion or misunderstanding about the process, contributing to heightened anxiety, distress and vulnerability.

3.8 Young defendants’ short-term focus

Research has highlighted the difficulty of getting younger adolescents to focus on the longer-term in the criminal justice context. Practitioners across the professions agreed, noting that they only felt able to provide young defendants with information geared to the next immediate stage:

‘Kids often only hear what they feel they need to know at the minute and so they don’t take in all they are told. They are not used to absorbing information or processing it’ (YOT member)

‘There is a real problem in overloading the young defendants with information. Many have a very limited attention span and so you really need a few meetings where you are able to give them information in “bite sized chunks”. Because a lot of young defendants do not have solicitors at the police station, you lose the opportunity to meet them once or even twice before the matter goes to court. The issue of speedy justice has added to the difficulty of fitting in meetings before the court hearing’ (solicitor)

‘Preparation is usually done on the day because this will be the first opportunity unless we have been involved at the police station. Even there I do not explain too much,

because they have just taken a difficult process on board. You don't want to overload them with too much information. This is true for parents as well' (solicitor).

3.9 Findings and recommendations

At a superficial level, many young defendants do not appear to have a problem understanding the court process. They do not ask questions or admit to gaps in their knowledge, and they often agree with what is put to them in court. However, the scoping study found that:

- disinterest, hostility and bravado often mask developmental delays, literacy and communication problems, attention deficits, anxiety, depression and substance abuse
- a high proportion of young defendants have significant primary (speech and comprehension) and secondary (literacy and numeracy) communication difficulties
- young defendants, including repeat offenders, are often confused about what happens in court and at other stages in the legal process
- many can take in information about the legal process only in 'bite size chunks' before each stage
- many do not think they are entitled to be heard in court
- many actively disengage from what is going on in court
- many do not understand the decisions of the court before they leave the courtroom. For those remanded in custody, this is a significant cause of heightened anxiety.

4 RESPONSIBILITY TO PREPARE YOUNG DEFENDANTS FOR COURT

4.1 Introduction

'The Professional Development Pack for YOT Practitioners' states that:

'The assumption is that a young person involved in the [criminal justice] system will either have the basic skills required to enable them to participate in the system appropriately or have the support to enable them to do so'.⁶⁰

The Professional Development Pack does not identify where responsibility lies for providing such support to young defendants. The chapter explores the problems caused by this lack of certainty and considers the roles of the range of people who are sometimes involved: Appropriate Adults in the police station; solicitors; YOT members; and staff in YOIs and secure units. Reference is made to lessons for young defendants which can be drawn from experience with distribution of the Young Witness Pack.

4.2 Appropriate Adults

An 'Appropriate Adult' attends the police station to accompany a juvenile in interview and at charge only when a parent or carer is unavailable and is therefore a source of information and advice in only a minority of cases.⁶¹ Providers of this service varied around the country and included YOT staff, panels of volunteers and social services emergency duty teams.⁶²

Appropriate Adults flagged up two barriers to the delivery of information which also played a part at later stages of the legal process. First, youths tend to focus only on their immediate circumstances. In the police station, they are most interested in when and whether they are going to get out and, in the interim, whether they will be fed etc. Information about court provided to them by Appropriate Adults is therefore limited, though they are likely to stress the importance of legal representation (practice varied as to whether a solicitor was required at the police station when an Appropriate Adult attended) and the need for punctuality at court. The second point stressed by Appropriate Adults is that one cannot rely on young people to indicate their lack of knowledge:

'Kids only ask questions if it is their first time and they are particularly anxious'.

⁶⁰ Youth Justice Board *'Professional Development Pack for YOTs'* (2002) p. 20.

⁶¹ It was pointed out that when a parent does not attend the police station, this should be followed up as it is an indicator that the parent may fail to accompany the young person to court.

⁶² In some areas, geographical distances and the limited number of Appropriate Adults on call have resulted in delays for young people held at police stations.

The greater information needs of young people from ethnic minorities was emphasised by one sessional worker. Some Appropriate Adults are involved in follow up, for example contacting parents.

Police custody officers were not reliable distributors of information leaflets. In a number of areas we were told that leaflets about YOTs and other aspects of the system were handed out at police stations, but sometimes the police stations and practitioners could not find or identify these publications.

4.3 Defence solicitors

It cannot be assumed that all young defendants have legal representation.⁶³ Interviewees thought that a significant proportion of young people were unrepresented at the police station. While most had a solicitor by the first court appearance⁶⁴, some areas thought all young people were represented in court whereas others reckoned one in 10 were dealt with without a solicitor. Police custody officers, appropriate adults and YOT personnel reported that some parents and young people simply wanted to ‘to get it over and done with’ at the police station and, to a lesser extent, at court without obtaining legal representation or advice. A few were reportedly unaware that legal representation was free and some did not know that solicitors had offices outside the court building. YOT staff commented that sometimes parents did not understand the role of the legal advisor and whether one was needed, which could work against the young person’s best interests.

The Law Society published a Criminal Practitioners Newsletter Good Practice Guide for defence solicitors dealing with children and young people in April 2002. This contains the following advice in respect of the preparing the young defendant for court:

‘You should always use language and give explanations which will be understood by the particular client... It is also important that you confirm with your young clients the exact meaning of what he/ she says to you to ensure effective communication’

‘When dealing with a client who is at court for the first time, explain the layout of the court and the roles of all those present’

‘Prepare the client for what their involvement [in court] might be’

‘You should also advise the client about the impact of their body language and physical attitude...’.

⁶³ No statistics seem to be available on the number of children not represented at the police station or at court.

⁶⁴ The duty solicitor consulted for the first time on the day of hearing has little time for explanations about the process.

Although the Law Society guidance emphasises the defence solicitor's responsibility in preparing the young person for court, the Society raised concerns about defence lawyers' use of the Pack and how far they could go in this capacity:

'This needs be discussed with defence solicitors and the Legal Services Commission. Currently solicitors are unable to set the time to work through the kind of guidance envisaged, although they will of course advise clients and answer their questions. The role of going through the guidance may fit with Appropriate Adults, teachers or social services.'

Participants at the Home Office seminar also identified constraints on solicitors' ability to prepare young defendants for court. These included limited out-of-court contact with clients and hence little time for preparation; confusion as to whether preparation was covered within current remuneration; the speed of the process before the first hearing; and their lack of specialist training.

Youth court work is not a recognised legal specialism. Solicitors and YOT interviewees referred to the difficulty for generalist duty solicitors in keeping pace with the changes in youth justice. This had implications for solicitors' approach to preparation of juvenile defendants. Some solicitors did not see this as a core activity for the profession:

'Pressure of work dictates that we can't do this. Most kids would be uninterested'

'Preparation should be the solicitor's job, but some will never do it'

'Even if you paid solicitors, they probably would not do preparation. They don't have enough time. They are not trained to interview clients, much less young people: Law Society training focuses increasingly on aspects of the business. It is not crucial to the trial process that the solicitor engages the young person – you can assess the evidence without this'

'You have to accept that the most important thing is getting clear factual instructions from the young client – not easy – and this must be the focus'.

Some solicitors felt marginalized by various youth justice reforms:

'Sometimes we feel that other parts of the system treat defence solicitors as getting in the way of some of the initiatives. This is particularly the case in respect of speedy justice' (solicitor)

'The concept of engagement... is causing serious problems for advocates. This course will look at strategies for combating what is, in effect, the sidelining of the defence solicitor's role in the youth court' (Legal Action Youth Justice training programme).

Most solicitors in our sample said they informed young defendants about the court process, though all felt constrained by the time available:

‘I do explain about court procedure but don’t have time for a detailed discussion. The whole system is a factory process now’

‘With first-timers, we go through what will happen in the immediate hearing. A general overview of the court process would be useful but we have little time and they rarely come to appointments’

‘We do not do much which could be described as preparation work. There is not enough time at court and facilities there are too poor to sit down and explain very much to them. Without good parental involvement, access and time with the young defendants is extremely limited. Very little guidance is given from the Law Society’.

Solicitors were divided as to whether preparing the young defendant for court was covered by current legal aid remuneration; the Legal Services Commission did not distinguish rates for youth and adult work and was not believed to see preparation as a significant role for solicitors.

‘A limited amount of preparation is covered by the existing fee’

‘Preparation for court would require consultation with the Criminal Defence Service to avoid costs being disallowed later’

‘The guidance specifically says that if we spend an hour chatting to a youth and to his parents by way of conversation that we would not be paid. However, if we were going through specific issues, such as those intended for the Pack, then we would be. Even within the standard fee structure you have scope for an hour and a half of preparation provided it is tailored specifically to them, rather than simply delivered in a standard lecture’

‘Anything apart from going through the evidence or court itself is not covered. We could hand out a Pack and answer questions but we couldn’t go through it with them. Our firm is probably a lot more flexible than others which refuse to do anything not paid’

‘While solicitors are unlikely to be challenged because of time taken on legal aid for preparation issues, the structure of legal aid does not really allow for this. Standard fees are an impediment because you get the same payment, to a degree, notwithstanding the amount of work done. If, say, there are two meetings in the office before the hearing, no extra fee would be allowed for this. There is provision for a “higher standard fee” to be paid, but on straightforward cases it is very difficult to justify. Where there is an early guilty plea, it would be difficult to accommodate much time for preparation and be paid. For not guilty pleas, there may be some possibility of accommodating preparation time’.

4.4 YOTs

All YOTs acknowledged that there were some children they did not see prior to a conviction. They were unclear what proportion of young defendants were seen. Bail supervision, for example, appeared to involve only a minority.⁶⁵

‘No-one at all prepares first-timers for court if they are not on bail supervision. This group needs preparation most and gets it the least’

‘Kids on long remands without bail conditions at the Crown Court⁶⁶ we don’t see at all. They are a small number but they are the highest risk kids. If the child is a first time serious offender, especially if there are adult co-defendants, we won’t hear of or work with them’.

YOT staff may provide explanations about court to juvenile defendants at various stages: while acting as an appropriate adult; as part of other pre-trial work; while staffing youth courts; and during post-court contacts and interviews for reports. However, such advice is given on an ad hoc basis. One YOT manager observed that she had discussed this with the team was surprised to find that ‘we all do it in different ways’.

YOTs reported seeing certain categories of young people routinely pre-conviction, including those on bail supervision, custody remands and in ‘final warning’ programmes. They also picked up those previously known to the YOT or currently under supervision and some particularly vulnerable children were offered voluntary support pre-trial or conviction. Such contacts often involved explanations about the court process, but were seldom explicitly for this purpose.

YOTs found more opportunity to provide explanations post-conviction during the preparation of reports although one YOT manager noted that ‘even report preparation requires no formal input about court’. YOTs provided post-court explanations about sentence because it was widely recognised that many young people had not understood the sentence imposed in court.

Young people remanded in custody are widely acknowledged to be potentially vulnerable⁶⁷, although there seems to be insufficient recognition that a lack of understanding of the process which locked them up is a significant ingredient of emotional distress. Visits from YOT

⁶⁵ The Youth Justice Board has been unable to provide statistics on this point.

⁶⁶ Several YOT members mentioned the value of taking young defendants due to appear in the Crown Court, on a pre-court familiarisation visit.

⁶⁷ See, for example, *Young Prisoners: A Thematic Review by HM Chief Inspector of Prisons for England and Wales* (1997); Angela Neustatter *Locked in Locked Out – the experience of young offenders out of society and in prison* (2002) Calouste Gulbenkian Foundation; Barry Goldson *Vulnerable Inside – Children in secure and penal settings* (2002) The Children’s Society.

personnel and even from solicitors have purposes other than preparation for court and anyway, such visits do not occur in all cases. Although a YOT member is expected to visit all young people remanded in custody within ten working days, several mentioned the difficulty of doing so where considerable distances were involved. This problem was confirmed by YOIs and secure units. Only three out of 10 YOIs and eight out of 17 secure units in our sample thought that YOT workers visited more than two-thirds of those on remand.⁶⁸ (The proportion was even lower for legal visits: only one YOI and three secure units thought that a solicitor visited more than two-thirds of young people on remand.)

Except where workers escorted individual young people to court, YOT assistance to children waiting on the day of court was limited. Some YOTs were unable to staff all youth court sittings:

‘This is a vulnerable area where staff can be withdrawn in order to cover report preparation’.

Even where YOT staff were present, they were rarely pro-active in finding out whether young people and parents have questions or concerns about the process (some thought this was a role for the court usher):

‘We have no time to speak to all those appearing unless they plead or are found guilty or are adjourned for reports’

‘We don’t speak to any “new” defendants unless they approach the court worker’.

One YOT had created a ‘Court Information and Advice’ support team, distinct from YOT case holders. The support worker, based in the court waiting area, approaches families and chats to them. Anyone asking questions beforehand about what happens at court is encouraged to speak to the support worker on the day. This scheme was piloted in 2001 and re-launched in May 2002. Early indications are that it is worthwhile. However, the team’s advice role is wide-ranging and does not focus solely the court process.

All YOTs welcomed the idea of the Young Defendants Pack but some had reservations about how far the YOT’s support and preparation role should go. This was not seen as a core function and there was no clear vision of a focussed court preparation role. Staff had no problem with handing out leaflets etc. but even the YOT with the ‘Court Information and Advice’ team did not wish to take on more structured work. It questioned how relevant it is for the YOT to support unconvicted defendants who were not ‘offenders’ and suggested that

⁶⁸ A pilot to install video links between four YOIs and YOTs is not intended to replace the first visit but should facilitate pastoral care, interactions between YOT and custody staff, and contact between young people and their families.

an independent person (perhaps a volunteer) would be more appropriate. Another YOT said of ‘first-timers’ who plead not guilty:

‘We would hesitate to get involved for fear of being seen as too intrusive. Many of these cases will never come into the system again and we take a conscious decision not to become involved’.

4.5 YOIs

When asked if their staff prepared young people for court, five of the 10 YOIs reported that explanations were offered by a bail information officer, probation officer or remand review worker, but mostly in response to questions from young people rather than as a formal part of induction; one noted that ‘the emphasis is on emotional support’. Three YOIs said that no-one did court preparation work with remands, observing that:

‘We are very short-staffed, have no legal services officer and find legal questions particularly difficult’

‘They ask us but it is not our job’.

4.6 Secure units

Secure units are much smaller in scale than YOIs and do not have legal services or bail officers. Nevertheless, personnel (mostly care staff involved in induction) in 11 out of 16 units engaged in some preparation work; again, mostly in response to young people’s questions rather than as part of a programme. A few took a pro-active role. As one explained ‘We are best placed to do this as we know the children better than their YOT workers’. However, some units which did not undertake this work said ‘It is not our job’ and ‘We are busy enough’.

A small number of young people in secure units and secure training centres were approached for this study by the organisation Voice for the Child in Care (VCC). None of them said they would approach institution staff for information about court. VCC observed that the staff themselves had little knowledge in this area, something confirmed by several of our interviewees.

4.7 Witness Service

A number of magistrates who chair youth panels expected that the recently created magistrates’ courts Witness Service would address the information needs of young defendants who appeared to be particularly anxious on the day of court. The Home Office Justice and Victims Unit advised us that defendants are not the responsibility of the Witness Service, though it appears that some local Services assist young defendants when they can, for example providing a familiarisation visit at the Crown Court.

4.8 Lessons from distribution of the Young Witness Pack

The Pack was published by the NSPCC and ChildLine in 1993 and has since been extended and augmented by a video. There was a large initial free distribution and further copies are available at cost. The Home Office Victim's Charter (1996) said that copies of the Pack would be supplied by the police in cases involving sex, violence or cruelty. The National Standards of Witness Care⁶⁹ published later that year confirmed that Packs would be supplied by the police 'subject to any agreed local arrangements'.

Nevertheless, a recent evaluation⁷⁰ revealed that, nine years after launch of the Young Witness Pack, there remained confusion about who should buy Pack materials when the free distribution was exhausted. This was linked to the lack of clarity about whose job it is to prepare young witnesses for court. Until recently,⁷¹ the government's position was that it was up to local areas to decide who was best placed to do this. As a result, service around the country has been very patchy with many young witnesses missing out altogether.

4.9 Findings and recommendations

Interviewees and those attending the Home Office seminar on 30 September concluded that Young Defendants Pack materials should be used, wherever possible, with the assistance of someone who can check the young person's level of understanding, correct misconceptions and answer any questions. Those who have a limited role in informing young defendants about the criminal justice process include an Appropriate Adult at the police station, the defence solicitor, staff at YOIs or secure units and YOT members.

There is a 'duty gap' in which no organisation or group has specific responsibility to prepare young defendants for court. Weaknesses of current arrangements include the following:

- practice varies and most of the help on offer is limited in scope
- solicitors' views vary in respect of their responsibility to prepare young clients for court, in part because the scope of legal aid payments for preparation is unclear
- YOTs, who seem best placed to take on preparation work, do not see contact with unconvicted defendants in the community as part of their core responsibility

⁶⁹ Trials Issues Group 'Statement of National Standards of Witness Care in the Criminal Justice System - Taking forward standards of witness care through Local Service Level Agreements' (1996).

⁷⁰ Joyce Plotnikoff and Richard Woolfson 'Evaluation of Young Witness Pack Materials' report to the NSPCC (2002).

⁷¹ The Home Office has recently funded the Witness Service to coordinate the provision of services to young witnesses.

- YOTs have difficulty in fulfilling their current obligations to visit those remanded in custody as quickly as required (only three out of 10 YOIs and eight out of 17 secure units in our sample thought that YOT workers visited more than two-thirds of those on remand)
- preparation for court is subordinated to children's contact with professionals for other purposes. As a result, assistance is not geared to the needs of the individual young defendant
- preparation work is not conducted according to any guidance or standards
- many young people, including 'first-timers' and those charged with the most serious offences, fall through the 'preparation net' altogether.

The findings also have implications for the training and funding of legal representatives. Defence solicitors are not required to specialise in youth court work, leaving some feeling marginalised by recent youth justice initiatives. Several commented that they were not trained to communicate with this target group. They were unclear to what extent preparation for court was covered under existing funding. Some young defendants (it is unclear how many) do not seek legal representation at the police station or before their first court appearance; we were told that some families may be unaware that legal advice is free. Increasing the proportion of young defendants who consult a solicitor before court would give legal representatives more opportunity to explain to them about the court process.

Following from discussions at the Home Office seminar on 30 September, it is suggested that:

- the Youth Justice Board should take lead responsibility nationally in coordinating delivery of the Pack
- local delivery should be coordinated by YOTs, though arrangements may vary (it was suggested that in some areas this service could be provided by trained volunteers)
- resources are allocated to ensure effective delivery of the Pack to young people. No YOT consulted during the study was in a position to undertake preparation work on a broader scale. This was also a problem for YOIs (not all of which had induction programmes) and secure units
- policy guidance for YOTs, YOIs and secure units should make clear where responsibility lies for preparation of young defendants, and which young people should receive priority assistance (it is suggested that these include those appearing in court for the first time; those remanded in custody; those sent to the Crown Court; and those identified at the police station as having particular communication and comprehension problems)
- solicitors are advised on the extent to which the preparation of the young defendant for court is covered by legal aid payments.

5 KEY MESSAGES FOR YOUNG DEFENDANTS

5.1 Introduction

Much of the subject matter to be addressed by the Pack already exists in some form. This chapter describes the scope of the Pack, summarises key messages highlighted in existing material and identifies some gaps which the Pack should address.

5.2 The scope of the Pack

The Pack materials need to be suitable for defendants:

- between the ages of 10-17
- on bail and on remand
- at different stages of proceedings (e.g. at the police station, the first court appearance, trial, report-writing and sentencing)
- in the youth court, Crown Court and the magistrates' court.

The Pack must take account of gender, learning abilities and ethnic diversity. Arrangements should be made to provide Pack materials in languages other than English.

5.3 Factual information

It is important that information in the Pack be as factual as possible. The Law Society warned that:

‘Youth justice is in a transitional state at the moment, both in procedure and in culture and is likely to continue being so for some time. To include particular messages or philosophies may well mean that some of the key agencies in the criminal justice system are ambivalent about endorsing, or indeed refuse to endorse, the material, and indeed it is more likely that the material will become dated quite quickly’.

5.4 At the police station

We were sent only one example of a leaflet for young people about what happens in the police station. Entitled *‘Detained in a police station – advice for young people’*, it is part of a series of distinctively designed leaflets by Warwickshire YOT. The key messages include ‘What is this leaflet for?’, ‘What should happen when you first arrive at the police station?’, ‘Why do I have to have an adult with me?’, ‘Why do I need a solicitor?’, ‘What are my rights?’, ‘While you are in the police station’, ‘Complaints’, ‘During the interview’, and ‘After the interview’.

The Pack guidance should address the questions which Appropriate Adults told us were young people's most immediate concerns, i.e. how long they can be held and whether they can have something to eat or drink and a blanket. These were not covered in the 'What are my rights?' section of the Warwickshire leaflet, even though the 'Appropriate Adult' leaflet in this series says 'Remember he/ she [the young person] is entitled to food and drink at any time if needed'.

The Youth Justice Board advised us that guidance for reprimands and final warnings was under review and therefore fell outside the scoping study. However, it may be appropriate to 'brand' any forthcoming material for young people consistently with the Pack.

An example of information for young people leaving the police station was provided by the Metropolitan Police Service ('*Youth Justice*' materials 2002).⁷² This consists of a green folder containing seven numbered A4 sheets on differently coloured paper and one leaflet. The folder includes a place to write down the details of court appearances. Topics addressed in the information sheets include:

- 'What happens now? We are giving you this pack to let you know what's going to happen to you now that you have been charged by the police with an offence' (this stresses the importance of attending court)
- 'Your Charge Record explained'
- 'Are you what is called a Persistent Young Offender?' (this explains about expedited hearings). Overleaf it covers: 'Did you commit the crime? Be honest with yourself... it is wrong to say you did an offence if you didn't just to get it over with'; 'the right to a fair trial'; and the possibility of a reduced sentence for an early guilty plea (see the leaflet on this subject, below)
- 'How to get to court' which provides space for address and directions to be added.

Guidance on sentencing discounts for an early guilty plea was favoured by some interviewees and viewed with caution by others. However, this advice is routinely provided to adult defendants not only through their solicitors but also directly, by means of a Trials Issues Group leaflet displayed in court buildings.⁷³ A similar leaflet entitled '*How do you plead?*' is included in the Metropolitan Police Service '*Youth Justice*' folder. This explains how the

⁷² We have asked the Directorate of Public Affairs and Internal Communication, Metropolitan Police Service, for information about the development and distribution of these information sheets, whether they have been evaluated and whether revisions or additions are planned. No response had been received at the time of writing this report.

⁷³ '*Pleading Guilty or Not Guilty*' Trials Issues Group (1996).

court may give a lighter sentence if the defendant pleads guilty at an early stage and advises how to enter a guilty plea if this is the defendant's decision. It emphasises the importance of obtaining legal advice and answers the following questions: 'Should I plead guilty if I am not?'; 'What if I don't have a solicitor?'; 'Will I get a lighter sentence if I plead guilty from the start?'; 'What does 'indicate an intention to plead guilty' mean and how do I do it?'; 'When should I tell my solicitor that I am going to plead guilty?'; 'Where can I find out more?'

Appropriate Adults and other interviewees raised concerns that some young defendants with no previous convictions were disadvantaged in the police station by not being aware of their eligibility for a referral order if pleading guilty at the first court appearance. We saw no information leaflets which addressed the issue at the police station⁷⁴, though there were a number of leaflets explaining referral orders at the point when they are made at court.

5.5 Seeking legal advice

The Pack should explain the importance of seeking legal advice before the first court appearance and the duties of the defence solicitor. Studies suggest that many young defendants do not understand the defence solicitor's role, for example, that it is separate from that of the authority of the court⁷⁵ and that the lawyer has a duty of client confidentiality.⁷⁶ Research also suggests that better understanding of the client/ solicitor role 'to a considerable degree, can be taught'.⁷⁷ Interviewees told us that some families were unaware that legal advice was free and that some young defendants did not know that solicitors could be contacted at an office away from the court. Pack materials could assist in this process.

The Metropolitan Police Service 'Youth Justice' materials include a sheet entitled on one side 'Do I need a solicitor?' and on the other 'Legal aid – getting your court case dealt with quickly'. The design and language used are more accessible to young people than the standard Legal Services Commission leaflet '*Criminal Defence Services at the police station and in court*' which one solicitor described to us as 'an embarrassment' to give to young defendants who find it difficult to understand the contents.

5.6 Bail supervision

The Pack should include information about bail supervision. The Buckinghamshire YOT Bail Supervision Scheme leaflet covers 'What is bail supervision?'; 'What will I have to do?'; 'What happens if I don't comply?'; 'What happens if I am breached?' and provides space for the name of the responsible officer and the date/ place of the first appointment. A similar

⁷⁴ However, there are leaflets concerning reprimands and final warnings, for example from Buckinghamshire YOT and the North Yorkshire Police.

⁷⁵ T. Grisso (1997) op. cit.

⁷⁶ M. Peterson-Badali and R. Abramovitch op. cit.

⁷⁷ R. Roesch, C. Webster and D. Eaves (1984) op. cit.

leaflet has been produced by Luton YOT. York YOT's Bail Supervision Programme leaflet explains about the operational procedures and describes the services offered by other agencies to which it can refer young people. It gives an example of a bail supervision action plan.

5.7 Going to the youth court

Interviewees highlighted the need for 'practical and factual information'. Information should be grouped according to stage of the process and plea, to avoid 'overload'. Typical suggestions for basic advice included:

- the importance of not being late or missing the date of the hearing and the consequences of so doing
- the powers of the court and the importance of complying with court instructions
- the importance of a parent or carer's presence
- the importance of raising any special difficulties they child may have and who should be told
- the court layout, where everybody sits⁷⁸ and the roles of the persons present, including the Press
- what to do if they do not understand something
- how the defendant gives evidence (including the age for taking the oath and provisions relating to different religions).

The Metropolitan Police Service 'Youth Justice' folder includes a sheet entitled 'Going to court. You have been bailed to appear at the youth court'. It does not provide an explanation of procedures in the courtroom but addresses 'Do I have to turn up?'; 'Must I be with my parent or carer?'; 'Can I bring a friend?'; 'Do I really need a solicitor?'; 'How do I get there?'; 'What do I do when I get there?'; 'What time will my case be heard?'; 'Do I need to bring anything with me?'; and 'What facilities does the court provide?'

Few YOTs appear to have developed similar guidance about the court. The only example provided to us is from Kirklees YOT: '*A guide to criminal proceedings in the Kirklees Youth Courts for Parents and Young People*' (2000) which is handed out at the police station. As

⁷⁸ One YOT told us that, as a result of the youth court becoming more informal with everyone sitting round a table, explaining the roles of participants had become 'even more confusing'. Introducing people at the outset was not enough and the YOT thought there should be names/ role identifiers on the table.

with the Metropolitan Police Service folder, the West Yorkshire Police complete a section on the cover identifying which youth court the young person is to attend and the date and time of attendance. Maps of court locations are included.

The booklet covers the following key messages: ‘What’s different about the youth court?’; ‘Some basic do’s and don’ts on the day’; ‘Who’s who in court’; ‘Before court’; ‘The first court appearance’; ‘Adjournments’ (conditional and unconditional bail, remands in local authority accommodation and remand to custody); and ‘The decisions of the court - trials, reports, sentencing, appeals’.

We did not identify any leaflets describing the magistrates’ court and the circumstances in which a young defendant might appear there if charged jointly with an adult. Youth court guidance should be adapted for the magistrates’ court, making clear the differences in layout, procedure and access to the public.

5.8 Going to the Crown Court

The Pack should also contain information for those attending the Crown Court. We did not identify any national or local leaflets explaining to young defendants about procedure in the Crown Court. The Court Service leaflet *‘Defendants in the Crown Court’*⁷⁹ sets out the standard of service to be expected but does not explain much about court procedures. It covers: ‘If you are on bail’ (referring to a local court information leaflet to be sent to the defendant or his solicitor, and availability of separate waiting areas); ‘If you want to contact us’; ‘Arranging your hearing’; ‘Travel expenses and allowances’ (if the defendant is acquitted and the judge agrees); ‘If you want to complain’; ‘Listening to you’; ‘If you want more information’.

Relevant guidance about the Crown Court is contained in *‘Judges and schools: A guide to court visits’* (Lord Chancellor’s Department and Citizenship Foundation 2002). This illustrated book covers civil as well as criminal courts and is aimed at school children. The relevant criminal justice sections include an ‘Introduction’ explaining that only those 14 and over can observe a case without the permission of the judge; a ‘Court System’ diagram; ‘Court Etiquette’; ‘Inside a Crown Court’ explaining participants’ roles; ‘The Crown Court in action – a quick guide to a criminal case’ explaining the stages of a young defendant’s court case through cartoon drawings; ‘Young people in court’, providing information relating to victims, witnesses and defendants; ‘Some things to think about’; ‘Contacts’ and ‘Court Dress’.

This book contains little about the youth court but some of the Crown Court information could be adapted for the Pack (the level of detail could be further simplified omitting, for

⁷⁹ In the Court’s Charter series. The version we received was published in 1998 but noted that it was ‘to be revised 2000’.

example, explanations about the role of the jury bailiff/ usher in guarding the jury and election of the jury chairman). The presentation in cartoon format is a useful model. The book is available in PDF format on the LCD website www.lcd.gov.uk and can be reproduced free of charge for educational purposes.

5.9 Reports for the court

The Pack should contain information about reports for court. Local leaflets address the same core information with some variations. Luton has separate leaflets for the magistrates' court and Crown Court. Both cover 'What will a pre-sentence report say about you?'; 'Why is a pre-sentence report important?'; and 'What happens next?'. The Crown Court version also includes sections entitled 'Do you know why your case is going to the Crown Court?'; 'What will happen if you plead guilty?'; 'What will happen if you plead not guilty to all offences or not guilty to the most serious charges?'; and 'What should you do if you change your plea?'.

Buckinghamshire YOT's leaflet covers 'Why does the court ask for a report?'; 'What is a pre-sentence report?'; 'What is a sentence specific report?' (to inform decisions of magistrates); 'Who else is involved?'; 'Is what I say confidential?'; 'Do I have a choice?'. Both the Luton and Buckinghamshire leaflets explain 'Who will see the report?'.

Torbay YOT's 'Pre-sentence report' leaflet adds a reminder that 'you, your parents and carers or your solicitor will still have a chance to put your point of view after the report has been read. If you feel anything that has been written about you is not true or fair, you can say so. If the court agrees with your view, an amendment will be attached to the report'. This information could usefully be labelled dealing with 'rights' (see below).

Whereas other leaflets tell the defendant somewhat opaquely that the court report will 'include information about your attitude towards the offence(s)', Gloucestershire YOT's 'The Court Report' is clearer about what is expected: 'Restorative Justice means that you will be asked to look at your offending behaviour, to take responsibility for what you have done and make amends to the victim(s)... Restorative Justice gives you the chance to put things right'.

5.10 Court orders

The Pack should contain information for young people explaining the purpose, procedures and obligations associated with each court order. Most YOTs have produced such leaflets and these have not been reviewed for the purpose of this report.

Some YOTs, such as Nottingham, have published a leaflet on 'Youth Offender Panels – Information for Young People and their families/ carers'. This covers 'What is a Youth Offender Panel'; and 'How is a Youth Offender Panel different from a youth court?'.

5.11 Explanation about the YOT

Many YOTs include in their series of leaflets one which explains the purpose of the YOT, its aims, equal opportunities, the defendant's rights (in relation to the YOT, not the court

process) and local contacts. While this information is important, it is generally not presented in a way which appears directly relevant to young people.

5.12 Disclosure of a criminal record to prospective employers

The only guidance for young defendants we have seen that deals with this is contained in leaflets concerning reprimands and final warnings (e.g. Buckinghamshire YOT and the North Yorkshire Police). These address whether the young person will have a criminal record if they accept a reprimand or final warning and whether they have to disclose this to an employer.

The government is engaged in a consultation exercise on changes to the Rehabilitation of Offenders Act 1974 in respect of disclosure of convictions.⁸⁰ Separate disclosure periods for young offenders (10-17) are proposed. Once this issue is resolved, advice for young offenders should be included in the Pack.

5.13 Other sources of information

In 2002, as part of the government initiative to promote public confidence in the criminal justice system, the Home Office published '*Criminal Justice System: the Criminal Justice Process – Who's Involved? Information*'.⁸¹ Ten thousand free copies have been distributed.

Illustrated with cartoon drawings, sections cover 'Arrest'; 'Preparation for court'; 'Magistrates' court'; 'Crown Court'; 'Sentence'; 'Who's involved?'; 'Further information'; and 'Websites'. The target audience is the general public (distributed through local authorities, libraries, Citizens Advice Bureaux and Law Advice Centres) and anyone coming into contact with the criminal justice system (distributed through criminal justice system organisations and lawyers). Although aimed at the public, copies are also being requested for criminal justice professionals and volunteers.

Although the illustrations make it more child-friendly, the text has not been modified significantly since this leaflet was first published in a non-illustrated version.⁸² The text could be simplified further for young defendants.

5.14 Rights

Research shows that children have little or no awareness of their legal rights, for example seeing a legal right as 'conditional', something that authorities allow them to have, but which

⁸⁰ Home Office (2002) '*Breaking the Circle: A report of the review of the Rehabilitation of Offenders Act*'.

⁸¹ The Home Office is not identified as the publisher; it is branded as 'CJS reducing crime and securing justice'. Contact details for further copies will be added in the next printing. Copies are available from Linda Bateman, 0151 236 0867.

⁸² '*Criminal Justice System Factsheet*' (undated) CJS reducing crime and securing justice.

can also be withdrawn.⁸³ They are likely not to foresee the consequence of waiving legal rights.⁸⁴ Many young people think that once charged a defendant must prove his or her innocence of a crime.⁸⁵

Most YOT leaflets for young defendants do not use the language of ‘rights’, or do so only in relation to issues relating to the YOT, not the legal process, for example:

‘Data Protection. The Data Protection Act 1998 sets out rules for dealing with personal information. Personal information about you will not be given or shown to unauthorised people or organisations. All information about you will be treated confidentially. However, any information that could put you or others at risk will be passed on to the relevant authority to protect you and the public’ (Gloucestershire YOT *‘The Youth Offending Team and You’*).

‘You and your parent(s) carer(s) have the right to be treated fairly, openly and with respect during your contact with this Service. In the same way, you are expected to treat others with respect. Supervision is available to all irrespective of race, language, culture, gender, religion, disabilities, sexual orientation or family responsibility’ (Kirklees YOT’s *‘A guide to criminal proceedings in the Kirklees Youth Courts’*)

‘[What to do] if you are unhappy with how you have been treated’ (*‘What is the Warwickshire Youth Offending Team? Information for young people’*)

‘The custody sergeant will tell you that it is your right to:

- have someone told that you have been arrested
- have an interpreter with you if you do not understand English or you are deaf. This service will be provided free of charge
- speak to a solicitor. This may be your own solicitor or the solicitor on duty
- look at the book which covers police powers and procedures – this is what is known as the Codes of Practice’ (*‘Detained in a police station – Information for young people’* Warwickshire YOT).

A three-fold credit-card-size card developed by Avon and Somerset Constabulary in collaboration with other organisations provides a useful model. Entitled *‘Stop, search and arrest - know your rights’* the card provides basic advice on entitlements.

The UK has been criticised by the UN Committee on the Rights of the Child for lacking a ‘rights-based approach’ to the youth justice system.⁸⁶ The paucity of material dealing with

⁸³ T. Grisso (1997) op. cit.

⁸⁴ T. Grisso (1997) op. cit.

⁸⁵ M. Peterson-Badali and R. Abramovitch (1992) op. cit.

legal rights is a missed opportunity to empower young defendants in the youth justice process, which would have commensurate benefits in reducing feelings of being distanced from the process. Given the messages from research that young people often are unaware of or misunderstand their legal rights, these should be given a higher profile in the Pack.

5.15 Informing young defendants about communicating with the court

The Pack aims to improve not only young people's understanding of the court process but also their ability to participate in it. We have not seen any leaflets which explain that the young person may be asked questions by the magistrates or that they may be given an opportunity to speak if he or she wishes to do so. They need to think ahead of time about what they would want to say to the court. The guidance should explain how this fits with solicitor's role to speak on their behalf.

5.16 Coping with stress

A number of the boys and girls, including repeat offenders, described feeling very stressed at court, for example shaking, having sweaty palms or shivering. These were some of the young people who said they paid no attention to what was going on in court and just wanted to get it over with. Some said nerves in court caused them to act inappropriately by laughing, giggling or even saying something rude. Others responded in a way that made them seem particularly unresponsive: 'The only way I could cope was to stare at the floor'. Advice is necessary not only on appropriate behaviour at court but also on recognising and dealing with physical signs of stress.⁸⁷

5.17 Findings and recommendations

There is a plethora of guidance of varying quality aimed at young defendants which would benefit from being brought together in the Pack, simplified and streamlined to highlight key messages. The Pack should make greater use of the language of 'defendant's rights' than is the case at present. It should contain factual information on the following subjects:

- the rights of young defendants while detained at the police station
- what happens when they leave the station
- an explanation of the charge sheet (part of the 'Youth Justice' pack developed by the Metropolitan Police Service)

⁸⁶ ChildRight (October 2002) *The UK before the UN Committee on the Rights of the Child* pp. 3-5.

⁸⁷ The Young Witness Pack *Preparing Young Witnesses for Court – a handbook for child witness supporters* (1998) contains a chapter on stress reduction and anxiety management techniques.

- the importance of obtaining legal advice before the first court appearance
- the consequences of the plea
- bail supervision and support available from YOTs on a voluntary basis
- going to court (covering the youth court, magistrates' court and Crown Court) including an explanation of roles, layout and procedures; the defendant's rights; appropriate behaviour and dealing with stress; advice that if you do not understand something you should say so; and guidance about speaking in court
- reports for the court
- court orders
- complaints procedures
- disclosure of a criminal record to prospective employers.

6 KEY MESSAGES FOR PARENTS AND CARERS

6.1 Introduction

Interviewees agreed that the Young Defendants Pack should include information for parents and carers.⁸⁸ The Youth Justice Board has funded leaflets for parents which were developed by Parentline Plus in conjunction with Wirral YOT and the Trust for the Study of Adolescence. This chapter discusses these leaflets and the views of parents interviewed during the study. It suggests topics to be covered in Pack guidance for parents and carers.

6.2 At the police station

The Pack should contain advice for parents and carers acting as Appropriate Adults. It should also contain, or be consistent with, information for those performing this role in an independent capacity.

Parentline Plus has a leaflet entitled '*A Parent's easy guide to Acting as an Appropriate Adult*' (some YOTs have adopted its content in their own leaflets). Key messages include the following: 'As a parent you can act as an "Appropriate Adult" for your child'; 'Before going to the police station'; 'What do I need to do on arrival?'; 'Can I speak to my child alone?'; 'What should I check?'; 'What do I do during the interview?'; and 'What happens after the interview?'

Although the leaflet contains information about what an Appropriate Adult should do before going to the police station, YOTs told us that in practice this leaflet is distributed only at the police station. Our enquiries at a small number of police stations suggested that distribution of such information is a low priority. Parentline Plus told us that police stations were less likely to take their leaflets 'although local YOTs may introduce them to their local contacts'. Awareness of appropriate material and the importance of distributing it should be addressed in training for custody officers.

The information about what to do before going to the police station includes the following:

'Get a solicitor. A solicitor can help prepare your child for the police interview and let them know what to say. Make sure that the solicitor has enough time to talk with your child before the interview starts. If you do not have a solicitor, ask the custody officer at the police station if a duty solicitor has been called. You can ask for a solicitor to act on your child's behalf free of charge. Be prepared to wait for up to two hours for the solicitor to arrive at the police station'.

⁸⁸ The booklet for parents and carers 'Your child is a witness' has been very well received by its target audience: Joyce Plotnikoff and Richard Woolfson 'Evaluation of the Young Witness Pack' (2002) NSPCC.

Parents described the police station as very intimidating and said that they were not offered information leaflets. They thought that there should be a poster in the waiting area because ‘really basic things need explaining’ such as why you have to wait and whether you and your child can get a drink (the Warwickshire ‘Appropriate Adult’ leaflet says ‘Remember he/ she [the young person] is entitled to food and drink at any time if needed’.) They thought that it was really important to get legal advice at the police station. Parents also suggested that an explanation should be given about fingerprints, photos and DNA samples and what happens to these if the young person is not convicted.

6.3 Going to court

The Metropolitan Police Service folder ‘*Youth Justice*’ (described above) includes an information sheet entitled ‘Please give this to your parent or carer – it’s a letter from the Metropolitan Police Service’. This explains that the parent and carer must attend court and that someone from the YOT will get in touch before the child’s case is heard.

The Parentline Plus leaflet ‘*A Parent’s easy guide to Going to Court with your child*’ covers ‘What will a solicitor do for my child?’, ‘What happens on the day of the court appearance?’, ‘Can I take a friend or relative with me?’, ‘Who will be in the courtroom?’, ‘What happens when we go into the courtroom?’, ‘Will the magistrates speak to me?’, ‘What will the magistrates ask me?’, ‘What might happen to my child?’, and ‘Will the magistrate ask me to do anything?’

The leaflet does not advise parents of the importance of drawing attention to any special needs or communication difficulties the child may have.

The parents to whom we spoke thought information for parents was as important as for their children. Some parents were puzzled by quite basic things such as where to sit and whether it was permissible to take off your coat in the courtroom. One said the YOT member who saw her son before the hearing was the best source of information about what happens in the courtroom ‘although it wasn’t very detailed’. Solicitors also provided information though professional interviewees thought that parents could also use advice about the role of the solicitor. Parents felt strongly about the problems caused by long delays at court for which they were unprepared (affecting, for example, arrangements for other children and decisions about where to park).

Parents thought children should be told when they would have to speak (i.e. to give their name and if they would need to take the oath) and whether they would have an opportunity to ask questions in court ‘and speak to the judge’. Solicitors had told some parents what sort of questions they might be asked but one mother said:

‘You’ve got nothing to do with the actual court case. You are sitting at the back and are not asked anything. When they ask questions, they don’t speak to me. I didn’t get an opportunity to say something and I’d have liked to. A question may be answered by the solicitor and it doesn’t come out the way you want’.

6.4 Court orders

Parentline Plus's *'A Parent's easy guide to Parenting Orders'* addresses 'What is a Parenting Order?'; 'What happens if I am given a Parenting Order?'; 'How does the court decide to issue a Parenting Order?'; 'What if I don't go to the court?'; 'What if I cannot attend or I am ill?'; and 'What if I do not keep to the conditions of the Order?'

Parentline Plus told us that when the leaflet on orders was first published, there was confusion about whether a parenting order can be issued without the parent being present in court. Since reprinted, the leaflet now makes it clear that an order can be made without the parent being present.

Buckinghamshire YOT has published *'Parenting Orders and Voluntary Support Programmes'*. This leaflet makes a commitment to equal opportunities and explains the complaints procedure. It also has sections on 'What is a Parenting Order?'; 'When can it be made?'; 'Who will supervise the Order?'; 'What will be expected of you?'; 'What happens if the Order is not complied with?/ Penalties for breach'; and 'Parent Support Group'. The final section is entitled 'Alternatively', for those unable or unwilling to attend the Parent Support Group.

One parent said she had no idea she could be ordered to attend a parenting course and said had been 'shocked'.

Two mothers whose had sons were sentenced to custody were emphatic that parents should be better informed both to prepare them for this possibility and to manage what happens better on the day of sentence. Both said that their sons were on medication but no-one had asked about this and neither had the medication at court. One said:

'They want you to be there as a parent yet they make you feel as if you are nothing. I've turned up to be supportive but then he was taken away and I was not allowed to say goodbye. I didn't know where he was being sent until he was able to call. I felt I was being punished too. I feel so gutted inside'.

Parents wanted to be told before they left the court building where their children were being taken to, what the visiting arrangements would be, and what they could take. The manager of a secure unit said:

'Why do the kids arrive with no clothing or medication? We should be given emergency contact details for both parents, including mobiles, and the name of the GP. I'd like parents to be told 'We are going to care for your child: what do we need to know?' The kids should be able to bring some personal items, for example, if they always sleep with a teddy. We should be told, are they bedwetters? President Bush doesn't need to put prisoners into Guantanamo Bay to keep them isolated – he could just put them into the juvenile justice system'.

6.5 Findings and recommendations

Parents have an important role in the youth justice system. There was widespread support among interviewees that the Pack include guidance for parents and carers about their own responsibilities and the key information to be passed to the young defendant. Parents were often confused about procedures. Where families had previous experience of the court system, it was often out of date. Guidance should address:

- the role of the Appropriate Adult at the police station
- seeking legal advice for the child (including the relationship between the child's solicitor and the parent)
- the need to draw attention to any special needs or communication difficulties the child may have
- going to court, emphasising the importance of the parent's presence
- court orders, including orders that may be imposed on the parent
- practical advice if a custodial sentence is a possibility or is imposed, for example about bringing medications to court, and how to obtain further information about the custody establishment
- support available on a voluntary basis from the YOT
- other sources of assistance.

7 KEY MESSAGES FOR THOSE PREPARING YOUNG DEFENDANTS FOR COURT

7.1 Introduction

Some solicitors had concerns about anyone other than a legal representative preparing young defendants for court. However, there are limitations on solicitors undertaking this work and many other categories of criminal justice personnel have a significant role to play in delivering Pack materials. These groups, including YOT personnel and staff in YOIs and secure units, wanted guidance for those assisting young defendants to prepare for court. The Young Witness Pack contains a handbook for child witness supporters produced after a period of time in which the role of supporters had developed and best practice messages had been identified. It is not envisaged that anything as detailed is initially required for those working with young defendants.

This chapter sets out basic guidance that should accompany the Pack for those working with young defendants.

7.2 The role of the person assisting young defendants to use the Pack

The principal concern of solicitors about the involvement of non-legal representatives was young people's tendency to personalise information about the court process and the potential to open up inappropriate discussions about evidence and possible court outcomes. The Young Defendants Pack materials should contain a warning about this, similar to the warning against not rehearsing or practising the young person's evidence contained in all 'Young Witness Pack' booklets.

The person preparing young witnesses for court has a responsibility to pass on information about the child, including whether they have any communication difficulties, to appropriate criminal justice system personnel. Where young defendants have already been the subject of criminal justice proceedings and ASSET forms have been completed, information about their abilities will already be recorded and should be available to the court. The guidance should clarify the circumstances in which someone preparing a young defendant for court should pass observations about the young person's communication skills and level of understanding to the defence representative and court.

Preparation for court involves more than use of the Pack. Practitioners emphasised the value of a familiarisation visit to the courtroom for those who had never been in court before. The Home Office has explained that the Witness Service, which offers this to witnesses, cannot perform this function for young defendants. Nor is it a routine part of the defence solicitor's duties. A policy decision is needed about who can offer this important service (see also the 'Key Issues' chapter, above).

7.3 The court experience of the person assisting young defendants to use the Pack

Ideally, the person using the Young Defendants Pack will be someone knowledgeable about the court process who can answer the young defendant's questions. It is likely that the staff of secure units and YOIs may use the Pack. However they, like 'Splash' scheme personnel and YOT volunteers (with skills in communicating with young defendants) have no court experience. Even YOT personnel acknowledged that they were not familiar with the Crown Court and in practice seldom had contact with young defendants awaiting trial there. This emphasises the importance of guidance for those using the Pack with young people and has implications for training. Officers in custodial establishments thought that such training, for them, would have a low priority.

7.4 Identifying those who are a priority to receive Pack materials

Priority in receiving Pack materials should be given to those appearing in court for the first time, those remanded in custody; those appearing in the Crown Court and any defendant, including repeat offenders, who have significant communication difficulties⁸⁹ or appear to not understand the court process. Interviewees suggested 'warning signs' to assist in identifying defendants in need of assistance:

- difficulties in engaging the young person in conversation⁹⁰
- evidence of learning difficulties (either self-reported or from education history)
- hearing difficulties
- school exclusion or truanting
- those for whom no parent attends the police station.

Police officers are being trained to improve their recognition of the physical and behavioural characteristics of vulnerability as part of the '*Action for Justice*' initiative. Much of the guidance in 'prompts to assist in identifying vulnerable witnesses'⁹¹ is relevant to the recognition of vulnerability in young defendants.

⁸⁹ Advice for those in the court system dealing with young people with communication difficulties is given at the website www.communicationsforum.org.uk/textonly/legal/legal2.shtml.

⁹⁰ HM YOI Polmont's screening process asks young people if they have any problems in understanding what is said to them and whether other people understand what they say.

⁹¹ Contained in Home Office 'Vulnerable witnesses: a Police Service Guide' (2002) Action for Justice 'Implementing the Speaking Up for Justice' Report.

7.5 Using the Pack

YOT members and others wanted clear instructions about using the Pack. Guidance for its use should draw on the experience of others who have developed relevant programmes in working with young defendants. It is suggested that this element of the Pack could benefit from experience of pilots in YOTs, YOIs and secure units to be conducted once the Pack materials are available.

Advice for those preparing young defendants could also draw on the expertise of the Howard League which runs two day ‘Citizenship and Crime’ workshops for secondary schools and 10-11 year olds in primary schools. The workshops challenge young people’s attitudes to offending, anti-social behaviour and their consequences; the criminal justice system and those who work in it; their role in the local community; and racism, sexism and other acts of discrimination. The programme, which aims to help young people develop social skills, self-esteem and assertiveness, is largely based on role-play and quizzes.⁹²

Feedback from the workshops indicate that young people:

- believe that courtroom interactions will be ‘like TV’
- are unaware that there are different levels of court or what they are called
- are unaware of the age of criminal responsibility or about sentencing options
- still think offenders are cautioned if they admit an offence.

The Pack guidance should refer to other relevant materials and initiatives which could be adapted for use with young defendants, such as posters and enlarged pictures in the waiting area which explain the layout of the courtroom.

Angela Mason, a member of the Lord Chancellor’s Committee on the Magistrates in the Community Project, displayed a wood model courtroom with figures of participants to the Home Office seminar on 30 September. She explained that around eight of these models, which are accompanied by story boards, are located around the country. Magistrates use them in schools’ presentations and role-play about courts. Such visual materials are described as being particularly successful in special needs schools. The court model and story boards relate to the adult magistrates’ court but could be adapted to the youth court.

7.6 Findings and recommendations

⁹² A similar programme has been developed in Peterborough by Youth Action against Crime, the YOT and others. For more information, contact Denham.Hughes@peterborough.gov.uk.

Guidance for those assisting young defendants to use Pack materials is important because at present, preparation work is not conducted according to any guidance or standards. Some of those carrying out this work have no direct experience of the court process themselves. Guidance for them should be pilot tested and finalised after introduction of the Pack, in order to identify good practice strategies. It should contain advice on the following topics:

- constraints on the preparation role for those who are not legal representatives (including the importance of avoiding discussions with the defendant about the offence, plea, evidence or possible outcome)
- the circumstances in which the person preparing young defendants for court should convey information about their communication skills and level of understanding about the court process to the defence representative and court
- sources of information for those, such as prison officers and staff in secure units, who have not been to court themselves (for example, the Home Office leaflet '*Criminal Justice System: the Criminal Justice Process 'Who's Involved? Information'*')
- the objectives of the Pack
- identifying those who are a priority to receive Pack materials
- how the Pack may be incorporated into preparation programmes and other work with young defendants.

8 THE CHOICE OF MEDIA

8.1 Introduction

Interviewees and those attending the Home Office seminar agreed that no single medium would either meet the needs of the entire target audience or be appropriate to convey all messages, from factual information to those aimed at changing attitudes. Certain messages could be reinforced by repeating them in different media. A range of materials would allow those assisting young defendants to select materials according to the needs of the individual and the stage of proceedings. This chapter discusses the importance of attractive and accessible presentation then discusses the relevant media in turn. It concludes with two tables: the first summarises the pros and cons of each medium and the second sets out the target audience and suggestions for use of the Pack components to be considered by the steering group.

8.2 Credibility

The target audience for the Pack has problems of attention span, literacy and language. Many are alienated by authority and suspicious of official ‘propaganda’. They are unlikely to admit to a lack of understanding even if invited to do so. This poses a significant challenge for those developing the Pack.

Whatever media are used, the materials must be immediately attractive and not condescending. In procuring the materials, it will be important not to restrict tenderers from proposing approaches which take account of the seriousness of the subject-matter but are also the most suitable for communicating with the target audience.

Many interviewees, including young people, saw cartoon illustrations as easily accessible to the target audience. They have been used successfully to deliver serious messages to young people, for example about Aids and bereavement. However, a number of interviewees, including magistrates, voiced reservations on the grounds that cartoons would undermine the seriousness of the court context. Similar concerns apply to games, even though these have been shown reinforce messages for a young audience (see the American websites, below). Several young people said that they would be more willing to learn about court through ‘something like a Playstation game’.

The materials must also be accessible. Existing leaflets vary in their use of appropriate simple language.⁹³ A number of local leaflets aimed at young defendants and their parents use technical language without explanation. Some quote legislative provisions:

⁹³ YOTs have been given guidance on how to simplify a text: *Professional Development Pack for YOTs* (2002) pp. 32-33.

‘The exchange of information between relevant authorities will be in accordance with section 115 of the Crime and Disorder Act 1998’ (no further explanation provided)

‘The court’s rights to decide on the sentence are set out in the Criminal Justice and Public Order Act 1984. Section 48 of the Act states: ‘In determining what sentence to pass on an offender who has pleaded guilty to an offence... a court shall take into account a) the stage in the proceedings... at which the offender indicated his intention to plead guilty, and b) the circumstances in which his indication was given’ (an explanation was provided of ‘indicating an intention to plead guilty’).

This concern for precision detracts from ease of understanding.

8.3 Video

Video was the most popular option for presenting information among young interviewees and criminal justice system personnel. Young defendants wanted a video showing what ‘really happens in court and who people are’. Several said it should feature ‘real kids who have been in trouble’⁹⁴ or be ‘like the TV programme “The Bill”’ and tell a story.⁹⁵ Young people are sophisticated consumers of video material and it must be of TV quality.

Adult interviewees thought this was the most ‘attention-grabbing’ way to convey messages to the target audience and facilitate discussion. They saw a need for three short video segments; the main one for the youth court and supplementary pieces for the magistrates’ court and Crown Court. (The young witness video, which was filmed in a youth court, magistrates’ court and Crown Court, is approximately 20 minutes in length.)

Although a single video would not be universally appropriate to an audience from 10 to 17 years old, it is probable that one depicting 14-15 year olds but using simple language would be attractive and accessible to most of the target audience. Ten to 12 year olds will not be ‘turned off’ watching teenagers though the opposite would be the case.

A video could be incorporated into induction programmes in secure units and YOIs. However, new procedures would be needed to show it to young defendants on bail, who have no obvious opportunity to see a video unless they are on bail supervision. Because young defendants and parents and carers may wait for a considerable time before going into court, we asked whether the video should be shown in waiting areas. Parents of young defendants liked this idea but both young people and criminal justice personnel had mixed views. Youths reported that some courts showed ‘boring’ information videos on a ‘loop’. Waiting areas were often described as noisy, chaotic places where it would be hard to concentrate and equipment

⁹⁴ The video ‘*Ryan’s Choice*’ was filmed in a YOI.

⁹⁵ HMP Brinsford has used a local footballer to introduce its orientation video for young offenders.

might be vandalised. However, some court building configurations were thought to lend themselves to the use of a video more than others.

Several young defendants and criminal justice system personnel suggested that a video could be shown while the young person is waiting at the police station. Young people said it would 'help with the waiting'; the adults saw it as an opportunity to provide additional information about the young person's rights in the police station. However, it was thought that police stations did not have facilities to play a video to those detained in the custody suite and in any case would be reluctant to do so.

Video can be played in a variety of ways. Nearly all criminal justice professionals had an office VCR. Most had computers with a CD drive and some could play DVDs. Most YOTs had computers and VCRs which could be accessed by young people. Solicitors noted that equipment was not always in a location suitable for use by young defendants who would need to be supervised. The relative strengths and weaknesses of the media are explored in the table below. Several interviewees mentioned that although they could not currently provide young people with access to DVD players, the availability of Pack material on DVDs would be an incentive to upgrade equipment.

The video could also be installed on a touch-screen information kiosk.

8.4 Touch-screen technology

The use of touch-screen technology does not require the intervention of a third party and does not require a high degree of literacy on the part of the user. It is a visual medium which may employ video, photos or animation and can provide an oral commentary. It can offer paths to information at different levels of detail and in different languages.

The Court Service is piloting the use of touch-screen technology in a number of Crown Court reception areas. A touch-screen kiosk which includes the video on jury service has been installed in Telford Town library.

The touch-screen in longest use in a court has been available in the waiting area of Bedlington Magistrates' Court, Northumberland for around five years. This contains an inter-active video filmed on the court premises, using actors. Touching the screen triggers audio and video and permits users to follow the court process at their own pace.⁹⁶ The programme goes through reception and booking-in, waiting, who's who and what happens in the courtroom. It contains two 'streams', offering users the choice of following the consequences of a not guilty and guilty plea in the magistrates' court. This initiative was developed by Mr Eric Burn, deputy clerk to the justices, who says that although the programme is not about the youth court, young people are the most frequent users of the kiosk. It has never been vandalised.

⁹⁶ The touch-screen programme is also being used, with adaptations, in training police recruits.

We have not seen the Bedlington touch-screen kiosk. Mr Burn is happy for members of the steering group to see it in use in the court building. He is also willing to meet the steering group to demonstrate the programme on a laptop, although this does not show its full functionality.

8.5 Printed materials

Despite the literacy problems of the target group, printed materials were the second choice of young people and adults, though the latter emphasised that many young people would need assistance to go through written material. Young people saw print as acceptable only if markedly different from what was currently on offer, with ‘lots of illustrations’ and ‘games and activities’. They also favoured having ‘something you could take away and look at again’.

There would be significant advantages to developing standard material centrally, in partnership with experts in designing material for young people. A range of booklets for young defendants have been developed locally but in the examples we have seen, the language and presentation are fairly formal.⁹⁷

Whatever media are used, it will be necessary for each component of the Pack to focus on just a few key messages. It is suggested that printed materials be presented as a numbered series with each geared to a stage of the process or key message.⁹⁸ The single sheets used in the Metropolitan Police Service ‘*Youth Justice*’ pack are a useful model. While there are advantages to combining written information together in a few leaflets, this has the risk of overwhelming the target audience. A series could also accommodate different ages and abilities by providing different levels of detail, as in the ‘*Young Witness Pack*’.

Printed materials need not always rely on text. Professor Sheila Hollins has developed a series of books ‘*Pictures without words*’ for witnesses with learning difficulties for use with a supporter.⁹⁹ These have been remarkably effective in conveying the court experience. In Canada, a child witness support programme has developed laminated placemat-sized cards with coloured pictures of criminal justice processes on one side (for example, getting ready for court; who’s who in the courtroom; the oath; testifying; cross-examination; the judge’s decision; and after court). The reverse explains what is happening in the picture; poses questions to the child and provides the answers; and lists common fears and concerns about the process or stage in question.¹⁰⁰ These pictures promote inclusivity: the series shows boys

⁹⁷ The Children’s Rights Alliance for England has launched a new service to make government publications more understandable and accessible to young people aged 12 to 18, and has appointed a national panel of over 20 young people to advise on the project: www.crights.org.uk/uwhat.

⁹⁸ All printed material should include the date of issue to facilitate updating.

⁹⁹ See, for example, ‘*Going to Court*’ (1994) and ‘*Mugged*’ (2002) developed in association with VOICE UK.

¹⁰⁰ ‘*My Court Case: a court orientation kit for child witnesses*’ Metropolitan Toronto Special Committee on Child Abuse Child Witness Program.

and girls of different ages and ethnic origins, some with disabilities and one is pictured using an interpreter.

8.6 Internet

Present practice is for individual YOTs to develop, publish and translate its own materials. Even if the Youth Justice Board decided not to publish Pack materials centrally, it would still be a significant advantage if centrally developed literature was available online. This could then be easily updated. Material on a website could be downloaded, printed and branded locally by YOTs, courts etc. It could also be accessed directly by those young people and families and other professionals with Internet access.

YOT managers told us that they would welcome a central resource on the Internet where standard advice could be downloaded in a range of languages.¹⁰¹ A YOT manager in Wales warned that there were dangers where the issue of translation was dealt with only as an afterthought. Because individual YOTs procure translations of their own materials, costs are duplicated around the country with the result that information is not uniformly accessible or of a standard quality. One YOT's leaflets conclude with the following advice: 'If this information is difficult to understand, we can provide it in another format for example in large print, on audio tape, in another language or through discussion'. The YOT advised us that it had never been asked to provide any of its information leaflets in an alternative format.

The information currently available on the Internet about the youth court could not easily be adapted to the needs of young defendants. The website www.cjsonline.org includes basic information about the youth court but not in a user-friendly style, for example referring to 'either way' and 'indictable only' offences without further explanation. Further information about the youth court is available on this website by going to 'Youth Justice Board' but this is not an obvious link to those who do not work in the criminal justice system.

American websites provide more imaginative models. The Arizona Foundation for Legal Services and Education, with funding from the Arizona Supreme Court, has launched www.lawforkids.org which has won a number of website education awards. It includes:

- animated cartoons of children learning about law
- 'Justice for All – meet Jay and see the inside of a Juvenile Detention Facility'
- 'Stories: hear first-hand from kids just like you who have learned about the law' (this includes the voices of defendants and crime victims)

¹⁰¹ Even a widely distributed national leaflet such as the Home Office's '*Criminal Justice System: the Criminal Justice Process – Who's Involved? Information*' (discussed elsewhere in this report) is not available in other languages. Local organisations are expected to fund translations if necessary.

- ‘Games: play games and learn about the law’.

The California courts’ website www.courtinfo.ca has a link for children ‘*What’s happening in Court? An activity book for children who are going to court in California*’. This awards a diploma to children who complete all the exercises and includes:

- a welcome from the Chief Justice, stating that ‘we want to make the experience of going to court easier to understand for all children’. He reminds children who are in court for any purpose that ‘you can always ask questions if you are in court and feel afraid or confused’
- easy-to-navigate pages laid out with pictures which take the child through the court process by asking a series of questions. Following explanations about the roles of court personnel, there is a game to match titles and functions
- advice is given on how to act in court, followed by a picture in which the child is asked to click on the things that should not be happening in court
- a section called ‘did I do something wrong?’ explaining what happens when children break the law
- ‘getting help’, emphasising the importance of legal advice when young people are arrested.

We examined existing Internet facilities. Sixteen Crown Court centres have virtual tours for jurors; there is also a generic juror tour for England and Wales. As far as we can tell, the only virtual tour aimed at witnesses is based at Ipswich Crown Court.¹⁰² (This states it is not suitable for young witnesses: a virtual court tour for young people could offer options making it suitable for young defendants and witnesses.)

A number of interviewees, especially staff in secure units, favoured the development of an Internet virtual tour for young defendants in the youth court and Crown Court. A tour modelled on a generic court has the disadvantage that it does not show the young person’s own court but was thought to be much more meaningful than pictures in a booklet.

As with print materials, a virtual court tour website must be easily accessible. The Ipswich web page is hard to find. There are no direct links to it from the Court Service homepage. Searching on ‘court tour’ in the site’s search engine does not produce a link to the Ipswich tour. A search on ‘virtual court tour’ yields no hits. Searching on ‘virtual tour’ gives a link to a

¹⁰² It has the Internet Crystal Mark, showing that it has been approved by the Plain English Campaign.

press release that, in turn, has a link to the Ipswich Crown Court site which has an icon to start the tour.¹⁰³

The tour requires a plug-in in order to play the interactive version. A link to get a free download of the plug-in is provided but, when we did so, the tour then ‘hung’. There is no help facility and it took some time to realise that the default settings on the plug-in had to be changed in order for the virtual tour to play.

The whole tour takes about 15 minutes in total. It begins with an animated user guide followed by five modules which play sequentially. Each module takes about 30 seconds to load with a 56K modem. The modules are entitled arrival, checking in, preparation, giving evidence, and afterwards. A voiceover by John Peel accompanies each module. There are various questions and labels which the user can click to reveal an answer or explanation (for example, of the role of people in the courtroom). At the end of the tour, a short questionnaire allows the user to provide feedback on site content and ease of use.

The Ann Craft Trust Centre for Social Work, University of Nottingham (Director, Deborah Kitson) is developing a virtual courtroom to assist witnesses with learning disabilities. If the government proceeds with development of a virtual court tour for young defendants, contact should be made with the Centre and with developers of the Ipswich website to benefit from the feedback received.

8.7 Audiotape

The *Professional Development Pack for YOTs* commends a YOT for piloting the tape-recording of key information for young defendants. In fact, the YOT in question still considers this a worthwhile initiative but has been unable to implement it as the person with the necessary equipment has left. A YOT in our survey that had tried taping material said tapes still needed to be used in conjunction with written material. There was little enthusiasm for the idea of audio-taped information among the young people we spoke to, although none of them had tried it. The central availability of audio-taped translations of standard information was suggested by some YOTs, particularly for parents and carers.

8.8 Other suggestions

A number of magistrates’ courts have wall-mounted pictures or diagrams of the courtroom layout in waiting areas. We were not told of any in use in youth courts.¹⁰⁴ Such illustrations were thought to be an inexpensive way of providing basic information. These could be developed as a by-product of the video or printed materials.

¹⁰³ The tour can be found at www.courtservice.gov.uk/ipswich/index.html.

¹⁰⁴ Although these are mentioned in The Law Society ‘Youth Court Cases – Defence Good Practice’ (2002).

Several interviewees suggested making information about the court process available on a helpline. Some favoured recorded information that could be listened to a number of times if necessary; a few thought it would be preferable to speak to a person who could respond to questions. Recorded information is only valuable where it is clear what questions will be asked; the training and running costs for a staffed helpline are considerable. We have therefore not explored this option further.

Table 3: Pros and cons of the media considered for the Pack

Medium	Pros	Cons
Print materials	opportunity to develop standard language and to use expertise in designing graphics and text for a young audience; can be 'branded' locally; separate sheets can focus on individual stages of the process and specific key messages.	literacy problems of a significant number of target audience; print materials, even more than other media, will require assistance in delivering the messages they contain.
Video	ease of access through VCR; can be used for individuals and groups; will fit into induction programmes in secure units and YOIs.	no obvious stage at which video can be shown to young defendants on bail pre-court.
CD-ROM	interactive; nearly all office PCs have a CD drive; holds about 20 minutes of video at lower resolution; most YOTs have PCs with a CD drive which young people can use; can include 'virtual tour' of the courtroom; can provide inter-activity directly or through links to websites through an Internet-enabled PC; vehicle for games.	target audience less likely to be familiar with computers; solicitors' offices do not currently allow young people access to computers.
DVD	for relatively little additional cost, a video can be converted to DVD format; can include 'virtual tour' of the courtroom; interactive features can be added to the DVD at additional cost; holds about 2 hours of high resolution video; can provide inter-activity directly or through links to websites through an Internet-enabled PC; vehicle for games.	target audience unfamiliar with DVDs on PCs; DVD drives on PCs are less common; offices are unlikely to have separate DVD players; interaction on a DVD player tends to be less flexible than on a PC.

Table 3: Pros and cons of the media considered for the Pack

Medium	Pros	Cons
Touch-screen	interactive; does not require the intervention of a third party; particularly easy to use (young people already familiar with technology through arcade games and cashpoints); can include 'virtual tour' of the courtroom.	requires installation of kiosk to support the programme.
Internet	interactive; YOTs have Internet access; easily updated; can be accessed directly by young people and professionals; standard text can be downloaded and tailored for local use; can include 'virtual tour' of the courtroom; vehicle for games.	target audience less likely to be familiar with Internet; speed of download limited by nature of Internet connection e.g. 56K modem vs Broadband, the computer hosting the material being accessed, and the number of users accessing the material at any time.
Audiotape	inexpensive way of delivering messages to target audience with literacy problems.	little enthusiasm for use because of its 'image'; may need to be used in conjunction with printed material.

Table 4: How the Pack materials might be used

Pack component	Target audience	Purpose	Suggested use
Video	12-17; priority for those appearing in court for the first time, those remanded in custody, those appearing in Crown Court and those with communication and comprehension difficulties.	show: what happens in courtroom (principally youth court; also segments on magistrates' court/ Crown Court); appropriate behaviour; what to do if you don't understand; thinking ahead of time about whether there is something you want to say to the court.	shown by YOTs, YOIs, secure units. shown in some court waiting areas?
Touch-screen kiosk	all young defendants and parents/ carers.	virtual courtroom tour with factual explanation of court process and roles, choice of type of court and plea route.	pilot in court waiting areas for those on bail; could be shown in YOIs; make scaled down version of virtual courtroom tour available on Internet.
Printed materials	all young defendants.	series of information sheets geared to stages of process, key messages and level of detail (to accommodate age/ developmental level).	distribution by police custody officers, YOTs, YOIs, secure units, solicitors, courts available on Internet?
Printed materials	Parents/ carers.	series geared to stages of process and key messages.	distribution by police custody officers, YOTs, YOI visitor centres, solicitors, courts etc.

Table 4: How the Pack materials might be used

Pack component	Target audience	Purpose	Suggested use
Printed materials	those assisting young defendants in use of Pack.	guidance in identifying priority groups to receive Pack materials and advice on how best to use them.	to be finalised after development of the other materials; distributed by YOTs, YOIs, secure units etc.
Posters	all potential users of Pack (lay and professional).	advertise awareness of range of materials.	display in police stations, court waiting areas, YOTs, YOIs, secure units etc.
Posters	all young defendants and parents/carers.	series of posters summarising key messages e.g. importance of seeking legal advice, behaviour in court, thinking ahead of time about whether there is something you want to say to the court.	display above, as appropriate.
Video (option incorporating footage from young defendants' video)	magistrates, judges, lawyers etc.	stimulating further discussion about good practice on Practice Direction and associated guidance, and raising awareness of proportion of young defendants' with communication difficulties	training events.

8.9 Findings and recommendations

The materials in the Young Defendants Pack must be attractive and accessible. Video offers a strong way of reaching this difficult audience. While CD-ROMs and DVDs offer some advantages, access to the technology is limited. Conversion of Pack material to these media should be considered at a later stage, when account can be taken of lessons learned in introducing the initial Pack materials.

It is suggested that the steering group consider the following options:

- a video (most probably drama) showing what happens at court focusing on rights, roles and the possibility that young defendants may be asked questions
- a more factual interactive tour of the courtroom explaining roles and procedures, to be shown on a touch-screen kiosk and available in a scaled down version on the Internet
- a series of illustrated information sheets for young defendants, allowing information to be selected according to the appropriate stage of proceedings and level of detail required
- guidance for parents and carers and for Appropriate Adults in the police station
- guidance for those using the Pack to assist young defendants to prepare for court, to be developed following pilot use of the initial Pack materials
- making versions of materials available in other languages.

9 DEVELOPING AND DISTRIBUTING THE PACK

9.1 Introduction

This chapter summarises issues to be considered by the steering group in developing the Pack, including copyright, the budget for development and production, coordinating the development of components, the numbers required, sales, the project timetable and raising awareness of the Pack.

9.2 Copyright

The steering group will wish to consider whether the Youth Justice Board or another department should hold the copyright of Pack materials. While departments can jointly sponsor publications, we understand that copyright can only be held by one organisation.

9.3 Costs of development and production

It is estimated that a budget of between £100,000 and £150,000 will be needed to develop the video and to provide an initial run of around 4,000 copies. Although videos can be made at less expense, script-writing and portrayal of drama costs more. It has been emphasised that ‘best TV quality’ is needed to interest this target audience. The budget also needs to accommodate the research, project management, filming in different court locations on weekends, and an additional margin of time when using young participants.

The 45 minute video *‘A Case for Balance’* (1996) was filmed at a cost of around £150,000, including separate production company and project coordinator contracts, accompanying written materials, packaging and the launch event. The cost also included distributing hundreds of free copies to Crown Courts and magistrates’ courts, police forces, the Witness Service in each Crown Court and NSPCC local schemes. Contributions to the cost were made by the Home Office, Lord Chancellor’s Department, Crown Prosecution Service, Department of Health, Bar Council, ChildLine and NCH Action for Children. Most funding came from the NSPCC which had received a donation earmarked for the video.

The 20-minute NSPCC young witness video *‘Giving Evidence – what’s it really like?’* (2000) had a similar budget. It was also funded by an inter-agency consortium and involved free distribution of a large number of copies. An inter-agency group chaired by the Bar Council is currently commissioning a video on the treatment of vulnerable witnesses. Some members of that group are also represented on the Pack’s steering group and will be able to advise on current budget considerations.

Eric Burn, Bedlington Magistrates’ Court, reported that its touch-screen kiosk and video programme cost approximately £25,000 five years ago. The Court Service could advise on the costs of the kiosks currently being piloted in the Crown Court. The Lord Chancellor’s Department advises that there are approximately 220 youth courts in England and Wales.

Once developed and piloted, touch-screen kiosks could possibly be installed in other locations such as YOIs.

It is hard to obtain estimates about the costs of website development without a detailed specification. However, a company which produces multi-media suggested that a virtual courtroom tour on a website would cost between £15,000 to £30,000, depending on the features. Again, the Court Service would be able to advise on the costs of developing the virtual tours now in use. Government departments could advise on the cost of website development and maintenance, including making available official publications on-line. The budget for the Pack should allow for significant input from those with expertise in designing websites for young people.

Much of the core information for the Pack's printed material already exists. Development costs would involve little completely new material but significant revision of existing text into a more user-friendly and perhaps illustrated format. The Youth Justice Board has already funded three Parentline Plus leaflets. It was unclear to what extent these are available across the country. Consideration should be given to whether these leaflets should be 'subsumed' into the Pack and made available with other Pack materials on the Internet, acknowledging, of course, Parentline's contribution. Parentline told us that they would 'certainly update the leaflets again if we were to reprint, but as a charity all reprints are dependent on funding being available'.

Key messages and artwork from the Pack could form the basis of information posters for display in police stations, YOTs and court waiting areas.

9.4 Coordinating the development of Pack components

The video could be a self-contained commission. However, economies in development of the touch-screen and Internet components could be achieved if these are procured under a single contract. Some of the video footage could be delivered in different ways, or material for different uses could be created on the same video 'shoot'.

In addition, the steering group may wish to discuss with the Judicial Studies Board¹⁰⁵ and Lord Chancellor's Department the possibility of commissioning a video for magistrates and judges to stimulate discussion about good practice in relation to the Lord Chief Justice's Practice Direction and associated guidance, and how best to address young defendants' communication problems. This could also be used in training for solicitors. Such a video could combine some of the content of the young defendants' video with interviews discussing good practice. This combination of drama and interviews was used to promote discussions about good practice among viewers of *'A Case for Balance'*. A version of the young witness

¹⁰⁵ As a consequence of Lord Justice Auld's recommendations, the Judicial Studies Board's involvement in developing training for magistrates is increasing.

video *'Giving evidence – what's it really like?'* was made for judges and magistrates, with an introduction by Lord Justice Kay.

The Court Service has already introduced virtual Crown Court tours for jurors and witnesses on the Internet. Consideration should be given to extending this to tours of magistrates' and youth courts, providing at least a 'generic' tour if not one based on individual magistrates' court buildings. A more holistic approach to the provision of information to court users should be easier in light of the new court organisation contemplated in the White Paper *'Justice for All'* which will bring together administration of the magistrates' courts and Crown Court.

9.5 The numbers required

Videos would be re-used by those showing them to young defendants. As a rough estimate around 30 videos will be needed by the organisations - including solicitors, magistrates' courts and youth courts - in each of the approximately 150 YOT areas. Videos would also be distributed to secure units, YOIs and probably to Crown Court centres which received copies of the young witness video for information purposes.

Some printed materials could be re-used (they could be laminated to reduce wear and tear) but it is envisaged that most would be handed out. We have not attempted to estimate the number needed although this is bound to be large. In 2000, a total of 141,689 young people of 10 to 17 were prosecuted in magistrates' courts for indictable, summary non-motoring and summary motoring offences. Around 5,000 youth cases were committed for trial in the Crown Court.¹⁰⁶

At present, YOTs develop, print and translate their own leaflets (Parentline published 25,000 of each of its three leaflets). The steering group will wish to consider whether Pack materials should be printed centrally. We suggest that they should be made available on the Internet.

The Home Office has promised to provide design and print costs for the 10,000 copies of the booklet *'Criminal Justice System: the Criminal Justice Process – Who's Involved? Information'*. We have also asked the Metropolitan Police about development costs for the information sheets in its *'Youth Justice'* Pack. These are not illustrated, but are designed in a more attractive and user-friendly format than conventional leaflets.

¹⁰⁶ Peter Kilsby, Home Office Crime and Criminal Justice Unit, Research Development and Statistics Directorate. Of those in the Crown Court, 3,167 were convicted and a further 1,813 were found not guilty. About one quarter were committed to the Crown Court by the youth court and the remainder were committed with an adult from the adult magistrates' court. There is no central data on the proportion of those pleading not guilty and plea outcomes in the youth court.

9.6 Sales

The steering group will wish to consider to what extent Pack materials should be distributed free of charge, in what circumstances they should be charged for, the price, and whether there should be discounts for bulk purchase. Calculations will need to take account of storage and administration costs.

The Young Witness Pack booklets and video have both been the subject of large free distribution exercises (in the case of the booklets, this happened when they were originally launched in 1995 and again when they were revised in 1998). These materials are now sold by the NSPCC at cost plus an amount that covers storage and handling (the young witness video costs approximately £13 including postage). Organisations' contributions to the cost of developing the Young Witness Pack and '*A Case for Balance*' included a number of free copies for each organisation. Proceeds from sales of the Pack have contributed to further revisions of the material.

9.7 Timetable

If the steering group decides to proceed, it will wish to check whether potential users of the Pack, such as the Prison Service, wish to contribute to funding and be co-sponsors. There may be other organisations which should be consulted. For example, we understand that the Basic Skills Agency is commissioning videos to tackle skills 'in context', which may be relevant. Consideration should also be given to whether parts of the Pack could contribute to the Citizenship component in the National Curriculum for Schools.

In compiling a list of prospective tenderers, the steering group may wish to refer to the short list put together for the video on the treatment of vulnerable witnesses. These companies were screened to identify companies with relevant experience, including several who have previously worked on projects for the criminal justice system and those directed at a young audience.

Based on experience with other videos, it usually takes around eight months from letting the contract to deliver the final product. Much of that time is used for detailed consultation with all necessary organisations and groups who must agree the approach. Sufficient time during the timetable has to be allowed for consultation within organisations, including the Judicial Studies Board, enabling them to 'sign off' decisions at each stage of the project's development. Six to eight months should be allotted to the development of written materials, to include time for discussing drafts with young people.

Some aspects of the Pack should be piloted. The guidance for those delivering the Pack to young people should not be finalised until the most effective ways to carry out this work are identified. Once the video and print materials are ready, it is suggested that pilot areas (YOTs, YOIs and secure units) be invited to use the Pack and report on their experience. In particular, the pilot areas should provide feedback on the resources involved and how the Pack can best be delivered within the expedited court timetable. Guidance could then be prepared based on

good practice. The use of a touch-screen kiosk in the court waiting area should also be the subject of a pilot exercise.

9.8 Raising awareness

It will be important to raise awareness about the Pack among potential users and also in the wider criminal justice community. Artwork from the Pack could be used to design posters for display in YOT and court waiting areas, drawing the attention of young people and their families to the Pack and arrangements for distribution. Magistrates, judges,¹⁰⁷ lawyers and others need to be aware of the advice being given to young defendants and the implications for their own practice. The judiciary should be encouraged to enquire in court whether vulnerable young defendants in particular have seen the Pack.

The Law Society has advised that there are about 2,900 firms doing publicly funded criminal work, not counting those handling exclusively private or Crown Court work (fewer than 4,000 firms in total). The Pack could be brought to their attention through the Law Society Gazette, the Criminal Practitioners Newsletter, the Law Society website and legal journals. The Pack should also be brought to the attention of the 136 training providers who offer courses specialising in criminal law and 33 institutions offering the Legal Practice Certificate. The Bar Council suggests that information about the Pack should be placed in Bar News and on its website, with mailings sent to members of the Criminal Bar Association.

9.9 Findings and recommendations

A budget of approximately £100,000 to £150,000 will be required to develop the video for young defendants. This includes the costs of producing the 4,000 copies which, at a rough estimate, would be required. The development of a touch-screen kiosk with a virtual courtroom tour cost approximately £25,000 five years ago. A virtual courtroom tour on a website could cost between £15,000 to £30,000, depending on the features.

Economies would probably be achieved if the video, touch-screen and Internet components were developed together. Tendering companies could be invited to describe the extent to which material could be re-used or created as a package. The Judicial Studies Board and Lord Chancellor's Department may also wish to consider commissioning a training video for magistrates on 'engaging' young defendants which could combine some of the video for young defendants with interviews discussing good practice.

Much of the core information for the Pack's printed material already exists. Development costs would need to cover the creation of some new material but much existing text could be revised into a more user-friendly and perhaps illustrated format. Key messages and artwork

¹⁰⁷ For example, the Pack could be described in the Judicial Studies Board's '*Youth Court Bench Book*'.

from the Pack could form the basis of information posters for display in police stations, YOTs and court waiting areas.

Some printed materials could be re-used (they could be laminated to reduce wear and tear) but it is envisaged that most would be handed out. Large numbers would be required. Over 140,000 young people aged 10 to 17 were prosecuted in 2000. We have suggested that priorities for receiving preparation for court should include those appearing in court for the first time; those remanded in custody; those with communication and comprehension difficulties and those attending the Crown Court. Around 5,000 youth cases were committed for trial in the Crown Court in 2000.

At present, YOTs develop, print and translate their own leaflets. The steering group will wish to consider whether Pack materials should be printed centrally and whether they should be made available on the Internet.

Some aspects of the Pack should be piloted. The guidance for those delivering its messages to young people should not be finalised until the most effective ways to carry out this work are identified. The use of a touch-screen kiosk in court waiting areas should also be the subject of a pilot exercise.