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29th January

Sir Robert Neill

MP for Bromley and Chislehurst & Chair of Justice
Committee

Dear Bob,

I hope this finds you well, as ever, and thank you for considering this belated response to the Committee's inquiry into the use of pre-recorded cross-examination (Section 28).

In writing this response I have consulted with various individuals who have direct experience of Section 28, including victims, the organisations who support them, officials in justice agencies, and members of the Judiciary. I therefore hope the below proves insightful and provides the Committee with information it seeks, while also posing questions the Committee may want to examine further.

Impact on Victims and Witnesses

It should be acknowledged and agreed that the courtroom experience is often highly traumatic for victims of crime, and any attempts to lessen this trauma and create a better experience for victims should be welcomed. Section 28 provides a calmer and less intimidating experience for victims and witnesses, and is a valuable measure in improving the anxieties of survivors who face uncertainty regarding their court appearances.

I have heard from support services that Section 28 effectively addresses victims' concerns about the unpredictability of when they will be called in or which day they will be required to attend. By providing a degree of reassurance, it has played a significant role in reducing unrest among survivors.

The scheduling of Section 28 hearings with a defined cross-examination time makes it easier for victims to plan their lives around this date, and in theory the date should not be delayed by other elements of the trial. Of course, there are circumstances in which Section 28 hearings are pushed, which can further add to a victim's distress, and I will explore some of this later on.

Although providing evidence at an earlier opportunity than the trial provides some benefit (victims are more able to move on, and feel able to safely access counselling), the scale of the backlogs at every stage of the system still result in significant waits for victims, with Section 28 hearings usually only scheduled a matter of weeks before the full trial. While welcome, this needs to be viewed in the context of often years-long waits for justice. These wider issues in the justice system also impact Section 28 hearings, and while a victim's evidence may not be delayed by other elements of the trial, these hearings are being impacted by shortages of staff and space. In a case brought to our attention there were a total of five attempts at a Section 28 hearing; on three of these occasions the victim had taken time off work, and travelled to London for the hearing, even booking accommodation. The reasons given for the cancellations included the Judge, prosecution, or defence not being available; and a lack of courtroom for the hearing to take place in. With the actual trial date fast approaching, the victim was no longer able to give evidence beforehand without delaying the trial, and so – through great anxiety – agreed to give evidence in court, only for the defendant to plead guilty on the first day of the trial. The victim in this case experienced significant distress and disruption.

Impact on the Jury / Differing Views

A crucial element that may of course undermine the victim experience of Section 28 is any indication that this format of evidence will lessen the impact it has on the jury, which leads me on to my next point.

Despite the positive impact of Section 28, support services have reported a reluctance among police officers to utilise this provision. There appears to be a prevailing mindset among police that Section 28 may not be as effective as having the victim on the stand for the jury to see in person. These concerns are often communicated by the police to the victim, and we have seen this discourage them from opting for Section 28, fearing that it might negatively influence the outcome of their case. In one live case we are aware of, which involves a young victim, the officer on the case has tried to discourage the use of Section 28 since the request was first made several months ago.

There also seems to be inconsistency in the CPS' approach to these hearings. In this same case, after the officer agreed to make the request for a Section 28 hearing, the CPS responded asking for the precise reasons why such a hearing was wanted, and apparently remarked that "unless there are very compelling reasons for granting the Section 28, it is likely to be refused by the court" and "if it is granted it would likely mean that the trial would be delayed". Clearly, delaying the trial in order to have a Section 28 hearing largely defeats the point of the benefits of Section 28.

The effectiveness of Section 28 also remains in contention. While the Ministry of Justice's evaluation of the use of Section 28 did provide some helpful insight into victims and practitioners' experience, it did not draw any conclusions about the effectiveness of Section 28 with regard to trial outcomes. Further research is clearly required, however change is also needed in order to make the policy a success. It is important to underline the benefits of a Section 28 to professionals, to support them in providing the right information, guidance, and reassurance to victims who want to understand more about attending court, the uncertainty of the day, and being in close proximity to the defendant.

Instruction on and awareness of Section 28 could also be provided to the jury in a case, to explain why a victim or witness may choose to pre-record their evidence. Greater understanding of the challenges witnesses face when being called as a witness (delays, psychological impact, last-minute changes) would also be beneficial.

Technology

Although the provision of technology in the court estate has improved over time, we know there are still significant issues and constraints. While remote access to trials is now possible, Section 28 hearings generally need to be conducted within the Court where a fixed camera is installed. We spoke to members of the Judiciary who believe that more remote cameras are needed in order to allow people to give their evidence from other locations, particularly children and those with disabilities. We have heard of courts hiring remote cameras at huge expense in order to make Section 28 a workable policy.

Fortunately in London, the [Lighthouse](#) is able to facilitate these hearings for children and young people, and we hear the majority of children and young people want to give evidence remotely via than being in the court building. The facility to remotely undertake Section 28 hearings is, however, not available for adults.

Transcript Delays

One cause of delays to Section 28 hearings which we heard from the Judiciary is delays to transcripts of ABE interviews, which are required in preparation of these hearings. We have heard of numerous examples of cases where, despite a gap of many months between the interview and the Section 28 hearing, a transcript has not been produced leading to a request to delay the hearing. The Judiciary we have spoken to find these delays unacceptable, and this risks the victim withdrawing.

In one case of sexual assault we heard, an ABE was done in mid-October 2022, with the Section 28 hearing granted and scheduled for the end of March 2023. A few days before the Section 28 hearing was due to take place, the Judge was informed that a transcript had still not been produced. This resulted in the Section 28 hearing not taking place, and the victim eventually gave evidence in court.

In another live case of domestic abuse which was brought to our attention – involving coercive control, strangulation, ABH, and cruelty to children – a Section 28 hearing was granted and is scheduled for February 2024. Despite the ABE taking place in November 2023, there is yet no sign of a transcript, and the victim's ability to give evidence at an earlier stage is at risk.

I have spoken to you previously about our 'Open Justice' campaign, and our belief that victims should be entitled to access transcripts of key parts of their trial. This information brings an interesting new dynamic to this, as victims who pay for transcripts are at least meant to receive them in a timely fashion, while ABE Interview transcripts, which are not paid for directly and instead are presumably absorbed into the cost of the contract with these private companies, remain unfulfilled for months, risking justice. There must be an urgent review into the cost and time efficiency of court transcripts, and the impact that delays are currently having in our justice system.

Thank you again for considering the above, and I welcome the Committee's continued work in this area.

Yours sincerely,



Claire Waxman OBE
Independent Victims' Commissioner for London