

Child Witnesses in the UK: It's Not a 'One Size Fits All'

Approach

By

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Abstract

Special measures have been introduced to improve the conditions under which children appear in court, but critics argue that the measures are still not going far enough. The aim of this thesis is to explore experiences of young people in the courtroom and the impact of procedures that have been employed to improve the conditions under which they appear as witnesses. Chapter Two provides a systematic literature review exploring the emotional victim effect and its potential influences within child witness populations. It was concluded that the emotional presentation of a child victim influences juror ratings of credibility across a range of conditions. Empirical research presented in Chapter Three examines professional perceptions of the pre-trial cross-examination method currently being implemented in England and Wales. Results suggest that overall, professionals believe pre-trial cross-examination will be helpful in reducing distress of child witnesses; but its application requires careful thought. The Bonn Test of Statement Suggestibility (BTSS, Endres, 1997) is critiqued in Chapter Four, concluding that the BTSS is useful in forensic applications when considered alongside measures of cognitive and situational factors. The main finding from this thesis is that child witnesses should be treated on an individual needs basis. However, further advancements in both research and practice are needed and options discussed.

Dedication

To my parents.... Leslie and Colette

To my ever patient partner and life accomplice Lee

To my oldest friend and trustworthy proof-reader Perdita

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Publications/Contributions

During the course of my postgraduate study within the School of Psychology, University of Birmingham, the following articles and conference abstracts were either submitted for publication or I am in the process of preparing the manuscript for publication. Where listed, the co-authors also advised on study design, data analysis and paper editing.

Rowsell, K. A., & Colloff, M. F. (In Press). Are Sad Children More Believable? A Systematic Review of the Relationship Between Emotional Demeanour of Child Victims and Juror Credibility Judgements. *Psychology, Crime and Law*.
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CHAPTER ONE

General Introduction

In England and Wales, the process for criminal trials is based on the adversarial model of justice. One of the basic principles in this model is that a defendant has the right to cross examine an accuser in live court (European Convention on Human Rights, 1998; article 6(1) the right to fair trial, and article 6(3) the right to examine witnesses under him, Hoyano, 2001). The process of cross examination generally occurs once the witness has answered all the questions posed by the prosecution counsel; the witness will subsequently be questioned by the defence regarding the accuracy of their versions of events. Cross examination is considered particularly difficult for children due to the impact of long delays between disclosure and appearing as a witness (Martin & Thomson, 1994; O’Neil & Zajac, 2013; Spencer, 1992), susceptibility to leading questions commonly applied during cross examination (Jack & Zajac, 2012; Segovia et al., 2017; Zajac & Hayne, 2003) and the potentially retraumatising impact of appearing in court (Hayes & Bunting, 2003; Knoche et al., 2018; Randell et al., 2018; Robinson, 2015). This thesis considers the experiences of young people in the courtroom and this general introduction will present a brief history of children as witnesses in England and Wales, a discussion regarding whether children are good witnesses, and the overall aims of the thesis. The terms victim and witness are used interchangeably through this thesis; I recognise that not all witnesses appearing in court are direct victims of offending. More specifically, Chapter Two explicitly uses the term ‘victim’ due to the literature on the emotional victim effect being primarily based on the direct victims of offending.

A Brief History of Children as Witnesses in England and Wales

Prior to the late 1980's, in England and Wales, children were expected to give evidence in the same manner as an adult witness, that is in live court with little to no protections such as access to special measures (e.g., screens to protect their identity, removal of wigs and gowns). Consequently, widespread public concern regarding restrictive legal practices, intensified by the publication of reports such as "Child Abuse Trends in England and Wales" (NSPCC, 1989), led to reforms in the ways child witnesses give evidence. Such identified difficulties for child witnesses included facing the defendant, restrictive courtroom procedures (such as the hearsay rule), linguistically challenging cross-examination questions, and the retraumatisation of appearing as a witness (Cooper, 1999; Spencer, 1992; Spencer & Flin, 1990, 1993). Such changes in practice, as academics and practitioners became aware of the difficulties that child witnesses encountered, resulted in child complainants increasingly being called to act as witnesses in criminal trials. The Hearsay rule relates to the admissibility of evidence; the only acceptable form of giving testimony at this time was verbally by the witness themselves. This means that pre-recorded evidence or an adult giving evidence on behalf of a child were not admissible. Critics of this rule argued that appearing in court as a witness is problematic because it raises stress and reduces ability to recall in an accurate manner, and also delays access to therapeutic interventions (McEwan, 1990; Spencer, 1992).

Due to the problems associated with child witnesses appearing in court, the Criminal Justice Act (1988, s.32A) introduced the option for children under 14 years to appear in the courtroom via live link (giving evidence from a separate room via closed circuit television link). Spurred on by this advancement, supporters of videotaped evidence pressed the government to consider wider revisions to the

Hearsay rule. Subsequently, the Home Office Advisory Group on Video Evidence (known colloquially as the Pigot Committee) was formed in the latter 1980's to further explore the impact of video evidence in trials involving vulnerable witnesses such as those under 18 years old.

Pigot Committee

The aims of the Pigot committee were first to explore the potential adaptations which could be made to criminal proceedings, and second to respond to suggestions that child abuse was increasing throughout England and Wales (NSPCC, 1989). The committee was driven by the need to ensure the acceptable treatment of children within the criminal justice system and recognised that, to guarantee this, many children would require additional support in the courtroom environment. The committee were tasked with exploring the feasibility of video evidence in criminal trials and made three main recommendations. First, it concluded that video recorded evidence in chief (where the child's forensic interview is presented in court to prevent them from having to recount their story again in live court) should be introduced in addition to the previously mentioned option for children to give evidence via live link (Pigot Committee, 1989). The committee believed that such a measure could potentially increase the proportion of defendants changing their plea to guilty prior to the start of trial. Second, the Pigot Committee (1989) advised that children under the age of 18 should be given the option of giving their evidence prior to trial (pre-trial cross examination), and, third, recommended the role of the intermediary as a communication conduit between the child and counsel in cases where communication may be obstructed (e.g., by the age of the child or identified vulnerabilities such as learning needs).

The Introduction of Special Measures

In 1991, as result of the Pigot Committee's findings, the Criminal Justice Act permitted the use of video evidence collected during forensic interviews as the child's evidence in chief (known as Section 27). Hill and Hill (1987) state that the aim of this was to aid memory recall of the child by reducing the time period between disclosure and trial, prevention of the retraction of the child's testimony due to pressure in familial abuse cases, and to reduce the traumatic impact of holding several interviews with the child. Wilson and Davies (1999) in a review of the Criminal Justice Act Reforms (1995), analysed 150 cases between 1991 and 1994, subsequently demonstrating that this measure reduced the stress of the child generally but did not increase conviction of defendants, demonstrating a benefit for the child in terms of their welfare but not for prosecution rates overall. Critics of this method however, raised concerns that video evidence lacks the persuasive impact of in-person testimony therefore making it difficult to assess credibility of the child's evidence (Hoyano, 2000). Additionally, credibility (a subjective measure used within the trial process to determine the accuracy of a child's testimony) has been used interchangeably in the literature with other terms such as believability, honesty, truthfulness, suggestibility, and reliability (Voogt et al., 2019). As a result of these identified issues, two sets of guidelines for forensic interviews of child witnesses were published: The Memorandum of Good Practice (MOGP, Home Office, 1992) and the subsequent Achieving Best Evidence (ABE, Home Office, 2002; 2007; 2011) guidelines.

The second and third suggestions made by the Pigot Committee (1989), namely the use of intermediaries and pre-trial cross examination, were not reconsidered until highlighted by the Report of the Interdepartmental Working Group

on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System (Speaking up for Justice, 1998). Subsequently both measures were written into the Youth Justice and Criminal Evidence Act (c.1, YJCEA, 1999) alongside other proposed measures such physical screens so the child is shielded from the interactions in the courtroom and the removal of wigs and gowns to reduce the intimidating nature and formality of the court environment. The subsequent Achieving Best Evidence (ABE, Home Office, 2002; 2007; 2011) guidelines were published to suggest best practice relating to all intimidated and vulnerable witnesses in court.

Section 28 Pre-Trial Cross-examination

Pre-trial cross-examination was included in the original YJCEA (1999) but has not been enacted until recent years. Supporters suggest that this approach will reduce delays and help witnesses feel less pressure (Baverstock, [MOJ] 2016), whereas critics argue it will potentially hinder the defence (McEwan, 1990). The main premise of this approach is that the cross-examination of the child is recorded with the judge, prosecution and defence representatives present prior to the commencement of the trial. Additionally, the legal counsels representing both the prosecution and defence are required to complete a ground rules hearing with the judiciary prior to trial commencement. The presence of a ground rules hearing prior to the pre-trial cross-examination session sets limitations on what legal representatives can ask and it is proposed that this has shifted practice in cross-examination questioning. Initial research shows that defence lawyers in Section 28 cases asked fewer suggestive questions, more opinion posing questions, and fewer linguistically challenging methods. For example, Henderson et al. (2018) demonstrated that defence lawyers employed fewer false starts (where the questioner starts one question, aborts this and

then starts another question) and multiple negatives (where more than one negative clause is applied in a sentence) than their non-Section 28 counterparts.

Current Prevalence

Ascertaining exact global figures is difficult, due to data not being widely available. Plotnikoff and Woolfson (2011) state that in England and Wales, child testimony increased by 60% between 2006 and 2009 and in a further study they note that in 2017-2018 the Crown Prosecution Service (CPS) recorded 12,318 young people appearing as witnesses in both magistrates and Crown courts in England and Wales (Plotnikoff & Woolfson, 2019). At least 21,575 children were subpoenaed between January 2017 and September 2019 to attend Crown or magistrate court hearings as victims, according to the UK Crown Prosecution Service Victims Management Information System¹. The number of children appearing as witnesses in nine European states is estimated to be around 2.5 million annually (European Union Agency for Fundamental Rights, 2017). Pantell (2017) states that in the USA, more than 100,000 children appear in court each year. It is clear that a significant number of young people are being called to give evidence in criminal trials globally. These significant numbers of child witnesses are likely to be a product of the reforms driven by academics and child centred campaigners discussed previously in this chapter and the drive to remove the significant barriers preventing young people from having their chance to give testimony in court.

Are Children Good Witnesses?

¹ A Freedom of Information (FOI) was submitted in September 2019. These figures require several caveats to aid interpretation; first, not all jurisdictions use the Victims Management System and therefore the figures given may underestimate the number of children appearing as victims nationally. Second, the figures relate to the numbers of young victims subpoenaed to appear as witnesses; there may be several reasons the child does not eventually give testimony, including late guilty pleas by the defendant and adjournments of the Court.

The inclusion of testimony from children in criminal trials has been hotly debated for several decades with focus on the ability of children to give credible testimony. Researchers have also been concerned by the extent that children are impacted by suggestibility, that is the vulnerability of the child to external influence and misinformation (memories of past events that are distorted as a result of the introduction of misleading information following the incident, Loftus, 2005). Credibility and suggestibility have important consequences in the commission of criminal trials regarding the child's ability to accurately recall an event and adult juror's assessment of the child's individual abilities when they observe the child's performance in court. I will discuss these next.

Credibility

There is no one, shared definition of credibility and the term is used interchangeably with reliability, trustworthiness, and believability. Available literature shows that assessments of the credibility of child witnesses can be influenced by both cognitive and affective factors (Ask & Landström, 2010; Hackett et al., 2008; Lens et al., 2014; Nitschke et al., 2019). In this thesis, cognitive factors are related to the expectancy violation theory, whereas affective factors are related to the compassion-affective theory. The emotional victim effect has been widely researched in relation to adult witnesses, and this theory posits that adult witnesses are more likely to be rated as credible when presenting in a distressed manner than a neutral manner (Ask & Landström, 2010; Bollingmo et al., 2009; Dahl et al., 2007; Kaufmann et al., 2002; Klippenstein & Schuller, 2012; Lens et al., 2014; Mulder & Winiel, 1996; Winkel & Koppelaar, 1991). Jurors making judgements about the reliability of witnesses do so on the basis of heuristic rather than systematic processing. Heuristic processing is

influenced by stereotypes, assumptions, previous experiences, and inferences as opposed to careful consideration of all the available evidence (Hackett et al., 2008; Lens et al., 2014). As such, behavioural cues such as: the age of the victim, type of crime, and the emotional presentation of the witness can influence subsequent credibility assessments (Bollingmo et al., 2009; Dahl et al., 2007; Kaufmann et al., 2002; Klippenstein & Schuller, 2012; Lens et al., 2014; Mulder & Winiel, 1996; Winkel & Koppelaar, 1991). Additionally, the compassion-affective response suggests that the reaction jurors experience toward an emotional victim is likely to manifest a stronger benevolent response than a victim who is presenting neutrally (Ask & Landström, 2010).

To date, a wider review of the child witness literature has not been conducted in relation to the emotional victim effect. It is important that we understand the processes behind adult juror assessment of child witnesses' credibility for the fair administration of justice, as the outcomes of trials have real life implications for all parties involved. The emotional victim effect is likely to be present throughout the child's criminal justice journey, not just their court appearance, and therefore the broader implications for decision making processes through both investigation and trial should be considered.

Suggestibility

As defined by Gudjonsson and Clark (1986), suggestibility specifically is “the extent to which, within a closed social interaction, people come to accept messages communicated during formal questioning, as a result of which their subsequent behavioural response is affected” (p. 4). Research on suggestibility tends to fall into one of two broad approaches; the experimental approach (Schooler & Loftus, 1986)

and the individual differences approach (interrogative suggestibility, Gudjonsson & Clarke, 1986). The experimental approach posits that suggestibility is a consequence of the environmental circumstances in which witness evidence is obtained, such as the forensic interview conditions. The individual differences approach examines the discrete nuances between the witnesses themselves and how those nuances are associated with suggestibility. According to the individual differences approach, therefore, it is possible to use measurements of individual difference to determine if one individual will be more suggestible than another.

Psychology has a particular interest in interrogative suggestibility in the context of forensic environments as it is important to ensure evidence is not impacted by errors or contamination from other sources to uphold the credibility of the child's testimony. Psychometric tests of interrogative suggestibility have been designed to apply to the forensic context, which measure both the situational and cognitive aspects of suggestibility for both adults (Gudjonsson Suggestibility Scale, GSS, Gudjonsson, 1997) and children (Bonn Test of Statement Suggestibility, BTSS, Endres, 1997; Endres et al., 1998). An up-to-date examination of the scientific construction and robustness of such tools is crucial to ensure their applicability to forensic settings.

Thesis Aims and Objectives

The aim of this thesis is to explore experiences of young people in the courtroom and the impact of procedures that have been employed to improve the conditions in which they appear as witnesses. To achieve this aim, Chapter Two provides an account of the emotional victim effect and the proposed underlying mechanisms (the expectancy violation theory and compassion-affective response) and

consolidates the current literature base using a systematic literature review regarding the emotional victim effect when adult jurors make decisions in cases involving children. A critique of the current literature and suggestions for practice and future research are also provided.

Chapter Three is a qualitative exploration of the Section 28 method which is currently being rolled out across courts in England and Wales. The most recent consultation with professionals on this matter was published in 2016 and, to date, no research has been conducted with professionals from the charitable sector. Participants from the police and charitable sector provided their perspectives on the current challenges young witnesses face and the anticipated consequences of the new system. Moreover, police participants were asked about their perceptions on whether Section 28 methodology can be adapted for vulnerable defendants.

Chapter Four of this thesis provides a critique of a psychometric measure used to assess levels of suggestibility amongst child witnesses. The Bonn Test of Statement Suggestibility is an instrument designed to measure interrogative suggestibility in children aged from 4 to 10 years old. The critique provided in Chapter Four explores the psychometric properties of the instrument and draws conclusions applicable to current real life practice. Finally, a discussion of the main findings of the thesis is provided in Chapter Five, where I outline why the research in this thesis is important alongside discussions on the implications for practice and suggestions for future research.

CHAPTER TWO

Are Sad Children More Believable? A Systematic Review of the Relationship

Between Emotional Demeanour of Child Victims and Juror Credibility

Judgements

Abstract

Adult female sexual assault victims who appear emotional are rated as more credible by jurors, which has been termed the emotional victim effect. Two explanations of this effect have been proposed: The expectancy violation theory and the compassionate-affective account. To date, the emotional victim effect in child victims, or the application of these theories to child victims, has not been reviewed. We conducted a systematic review to examine how child victims' emotional presentation influences mock juror credibility judgements. We searched five databases acquiring 1,946 articles. A further two articles were included after initial screening. Following quality assessment, eight studies were identified as suitable for inclusion in the current review, with a total of 2,148 participants. These studies all showed that 'sad' emotional presentation of a child victim increased subsequent mock juror credibility ratings. Type of emotion, proportionality of the emotional response, level of empathy, gender of the participants, and age of the victims, also influenced credibility judgements made by jurors. The review illustrates evidence of the emotional victim effect within the child victim population, discusses possible explanations of the effect, moderating factors, and highlights the important implications of these findings at multiple stages of the Criminal Justice System.

Introduction

The admission of testimony from victims is routine in the commission of criminal trials. Prosecutors are reliant on credible victim testimony for successful prosecution and it is the contrary role of the defence to highlight any inconsistencies in the victim's account. There is no clear shared definition for the concept of credibility because across literature and disciplines, and even within legal guidance, the term is used interchangeably with other terms such as 'reliability', 'trustworthiness', and 'believability'. During a criminal trial, jurors are tasked with determining whose story is more credible; the victim's or the defendant's (R v B, 2010). Jurors are members of the public chosen at random to administer judgement on guilt and possess no formal training to complete this task. Research shows that juror judgements about adult victim credibility are reliant on social norms, stereotypes, and beliefs concerning the victim's demeanour, including the victim's emotional presentation (e.g., sadness, anger, neutral; Lens et al., 2014). The picture however, is less clear regarding juror judgements of child victim credibility. Children's testimony is usually given following an experience of maltreatment or abuse. As a result, many children globally come into contact with legal systems every year (Malloy et al., 2011). It is imperative, for the balanced administration of justice, to understand juror decision-making in cases involving children. Here, I conducted a systematic literature review to examine how the emotional demeanour of child victims can influence juror decision-making and judgements about child victim credibility.

Adult Victims

There is a wealth of empirical research regarding the impact of a victim's demeanour on judgments of credibility in relation to adult victim's testimony.

Distressed adult victims are more likely to be judged as credible compared to those who appear neutral, a finding termed the emotional victim effect (Ask & Landström, 2010; Bollingmo et al., 2009; Dahl et al., 2007; Kaufmann et al., 2002; Klippenstein & Schuller, 2012; Lens et al., 2014; Mulder & Winiel, 1996; Winkel & Koppelaar, 1991). A meta-analysis examining the emotional victim effect in female adult victims of sexual assault concluded that a distressed compared to a neutral demeanour increases perceived credibility. The effect size was estimated to be small to moderate (Nitschke et al., 2019). As stated by Kaufmann et al. (2002) “It is not what you say that determines credibility, but how you say it” (p.30). Further research has examined the possible influencing factors of this effect. For example, the meta-analysis by Nitschke et al. (2019) considered only adult female sexual assault complainants, but a small amount of other research has not always found the same result with male victims (e.g., Landstrom et al., 2015; Rose et al., 2006) or differing crime types (Bosma et al., 2018). Moreover, research shows that female observers (Landström et al., 2015) and social workers (Mulder & Winiel, 1996) are more likely to rate victims as credible. Differing levels of victim distress (Kaufmann et al., 2002), consistency of emotional presentation (Klippenstein & Schuller, 2012), and the proportionality of emotional presentation (Rose et al., 2006) have also been shown to influence subsequent credibility ratings.

Two theories have been proposed to explain the emotional victim effect: one cognitive and one affective. First, expectancy violation theory posits that an observer’s credibility ratings about a victim are influenced by the non-verbal emotional presentation of the victim and bias is caused by the observer’s preconceived belief of how the victim should present. Behavioural cues which are congruent with the observer’s expectations are often attributed to the external event (e.g., the crime),

whereas cues which are incongruent violate the expectations of the observer and therefore the cues are attributed to internal factors (e.g., dishonesty; Hackett et al., 2008). Therefore, if a victim's emotional presentation is congruent with the observer's beliefs regarding the impact of the crime, the victim is judged as more credible than a victim who presents in an incongruent manner (Klippenstein & Schuller, 2012). Given that often the preconceived belief is that victims should be sad or distressed, victims who present in a neutral or controlled manner are often considered to be lying and somehow responsible (Baldry et al., 1997; Winkel & Koppelaar, 1991). The process where an observer attributes a viewed behaviour to a stable internal process in the victim (dishonesty) rather than as a consequence of the circumstances the victim finds themselves in is a form of cognitive bias known as fundamental attribution error (Ross, 2018). The second account of the emotional victim effect suggests that a victim who presents emotionally is more likely to be believed than a victim who presents neutrally, because a stronger benevolent response is evoked in the observer by the emotional victim, called a compassionate affective response (Ask & Landström, 2010).

Why is it Problematic that Jurors' Assessments are Influenced by Victims' Emotion?

A victim's emotional presentation is not a reliable indicator of their accuracy or truthfulness. When observers rely on the emotional presentation of the victim, they are using heuristic processing instead of systematic processing (Hackett et al., 2008). Heuristic processing occurs when individuals use behavioural cues to make judgements and decisions with minimal cognitive effort, instead of carefully considering the available evidence (e.g., the content of the testimony). Often heuristic judgements are made using stereotypes, assumptions, previous experiences, and inferences and these can be misleading. It is often assumed that a traumatised victim should present in a

distressed manner (Wrede et al., 2015). However, traumatised victims of crime can react in varying, disparate ways. One prominent theory is that trauma can be manifested in various forms across four domains: emotional (shock, fear, irritability, loss of pleasure, depression), cognitive (difficulty concentrating, disrupted memory, intrusive thoughts, decreased self-esteem), physical (sleep disturbance, increased activity level, decreased appetite), and behavioural (social withdrawal, conflicts or aggression, avoidance, increased risk taking; Kanan & Plog, 2015). Moreover, there are many factors that can impact an individual's response to trauma, such as availability of appropriate support systems and their personal resilience (e.g., Smith, 2013). Given that trauma literature indicates victims will present in unique ways, and not necessarily appear distressed (McAdams & Jones, 2017), determination of victim credibility based solely on the distressed emotional presentation of the victim, instead of on the victim's testimony, may result in victims being deemed less credible than they ought to be. Additionally, adult victims who do not present in the expected distressed way can also be considered as being subjected to a form of secondary victimisation, where victims are "wounded again by the negative reactions of others" (Baldry et al., 1997, p.163). They are likely to be judged "with greater scepticism" by lay persons (Klippenstine and Schuller, 2012, p.79), and are therefore perceived as less believable or credible (Baldry & Winkel, 1998), which has negative psychological consequences for the victim. For example, victim blaming, where an individual is held partially responsible for their situation and "regarded with suspicion and mistrust" (Winkle & Koppelaar, 1991, p.29), is probably the most researched form of secondary victimisation. Victim blaming often occurs when people accept myths about rape (e.g., the belief that perpetrators of rape are usually strangers, Dawtry et al., 2019), have a lack of

understanding about consent (Hills et al., 2021) and being intoxicated at the time of the incident (Osman & Davis, 1999) leading to individuals being less likely to report (Fisher et al., 2003), experiencing feelings of shame (Schmitt et al., 2021) and PTSD symptoms (Ullman & Peter-Hagene, 2014).

Child Victims

Given their participation in many criminal trials, it is important to understand how jurors come to assess the credibility of testimony from children. Credibility research of child victims has tended to focus on the interplay between the child's ability to be accurate in their recall of events versus the juror's rating of the child's individual abilities during testimony. For example, many studies have examined a child's ability to differentiate between fact and fiction or to be deceptive (e.g., Antrobus et al., 2016; Block et al., 2012; Ross, 2003). Research has shown that children as young as 2 years old are able to be deceptive because motivators for lying, such as self-enhancement and self-protection, develop from a sense of self which emerges from this age (Evans & Kang, 2013; Talwar & Crossman, 2012). However, sophistication in lying develops as cognitive ability increases and therefore mastery of this skill increases with age, with children being able to produce purposeful lies from the age of 4 when they have acquired the cognitive skills of theory of mind and deontic reasoning (Talwar & Crossman, 2012). Some research has concluded that younger child victims, from 5 to 11 years old, are deemed to be less credible than adults and older children because their memory ability is not yet fully developed. Some researchers posit that this is because children are more susceptible to imagination, coaching from adults, and are more suggestible to misinformation (e.g., Antrobus et al., 2016; Brown & Lewis, 2013; Eaton et al., 2001). Other research however, argues that younger children are rated as more

credible than older children in sexual offence cases (Bottoms & Goodman, 1994; Nightingale, 1993; Ross et al., 2003), possibly because younger children typically lack the sexual knowledge and experience to be able to fabricate complex stories. Ross et al. (2003), found that children aged under 12 were deemed to be more credible than children aged 12 to 18, although it should also be noted that children's understanding of sexual acts and abuse vary across individuals (Bottoms et al., 2003).

Research also shows that extra-legal factors can influence adults' assessments of children's credibility. The demeanour of a child victim, under the age of 18, appears to influence observers' decision-making processes and judgements of their credibility (Bederian-Gardner et al., 2017; Cooper et al., 2014). Several studies reported an emotional victim effect and used expectancy violation theory to explain observer's ratings of the credibility of child victims (Cooper et al., 2014; McAuliff et al., 2012); arguing that if a child presents incongruently to observer expectations, it is likely the child will be rated as less credible. Factors such as juror age and gender also appear to be associated with variation in adults' perception of child credibility. For example, some research has reported that female jurors give child victims higher credibility ratings than their male counterparts (Baldry et al., 1997; Bottoms et al., 2014).

To date however, there has not been an attempt to consolidate the existing research to provide a robust overview and critical analysis of the literature examining how child victim demeanour influences credibility judgements, and explore the possible moderating factors. It is important to review the literature on child victims because it is possible that the emotional victim effect is different for children than adults. For example, jurors may have different ideas about how child victims compared to adult victims should behave, or may be more likely to have a compassion-affective response

towards a child than towards an adult due to the assumption that adults are responsible for safeguarding children (Ask & Landström, 2010). Here, I conduct a systematic literature review to determine how the emotional presentation of a child victim impacts on juror perception of credibility during testimony. An overview of what is currently known is provided, gaps in knowledge identified, and a discussion of methodological limitations conducted to make suggestions for future research and practice.

Method

Search Terms

I developed a PICO framework (see Table 1). The review examined research comparing different emotional presentations of young victims giving testimony to subsequent credibility judgements made by jurors. Although a recent meta-analysis of the adult literature by Nitschke et al. (2019) considered only female sexual assault complainants, here I do not restrict the search to female children, nor specify the crime type, because I wanted to explore whether similar findings that have been observed in the adult literature also apply to children.

Table 1.1

PICO Framework Table and Inclusion and Exclusion Criteria

Study Characteristic	Inclusion Criteria	Exclusion Criteria	Rationale
Population.	Jury eligible adults.	Jury ineligible adults.	To replicate the jury eligible population in real trials.
Interventions.	The child’s emotional presentation (e.g., sad, happy, angry, neutral) is experimentally manipulated between subjects.	Other methods, such as field research and qualitative studies.	To focus the results of the review.

Study Characteristic	Inclusion Criteria	Exclusion Criteria	Rationale
Comparators.	Different emotional presentations, including sadness, anger, positive or neutral.	Other types of emotional presentation.	To focus the results of the review.
Outcome.	Judgments of child credibility and ratings of defendant guilt made by mock jurors.		To answer the research question.
Age of child victims used in stimulus.	4-18 years old.	Victims younger than 4 and older than 18.	A child aged under 4 may have less developed linguistic skills (e.g., La Rooy et al., 2016). A victim aged over 18 is considered an adult in most countries globally.
Timeframes.	Studies published within the last 20 years (1998 to 2019).	Studies conducted prior to 1998.	To ensure the included studies are current.
Publication.	Published studies only.	Unpublished studies.	Scoping exercise provided no hits for unpublished literature and the criminal justice system favours published research (e.g., Daubert Criteria regarding admissibility of evidence).
Language.	English language.	Non-English language.	International research more likely to be published in English language only.

Using the PICO framework, the following search terms and operators were used:

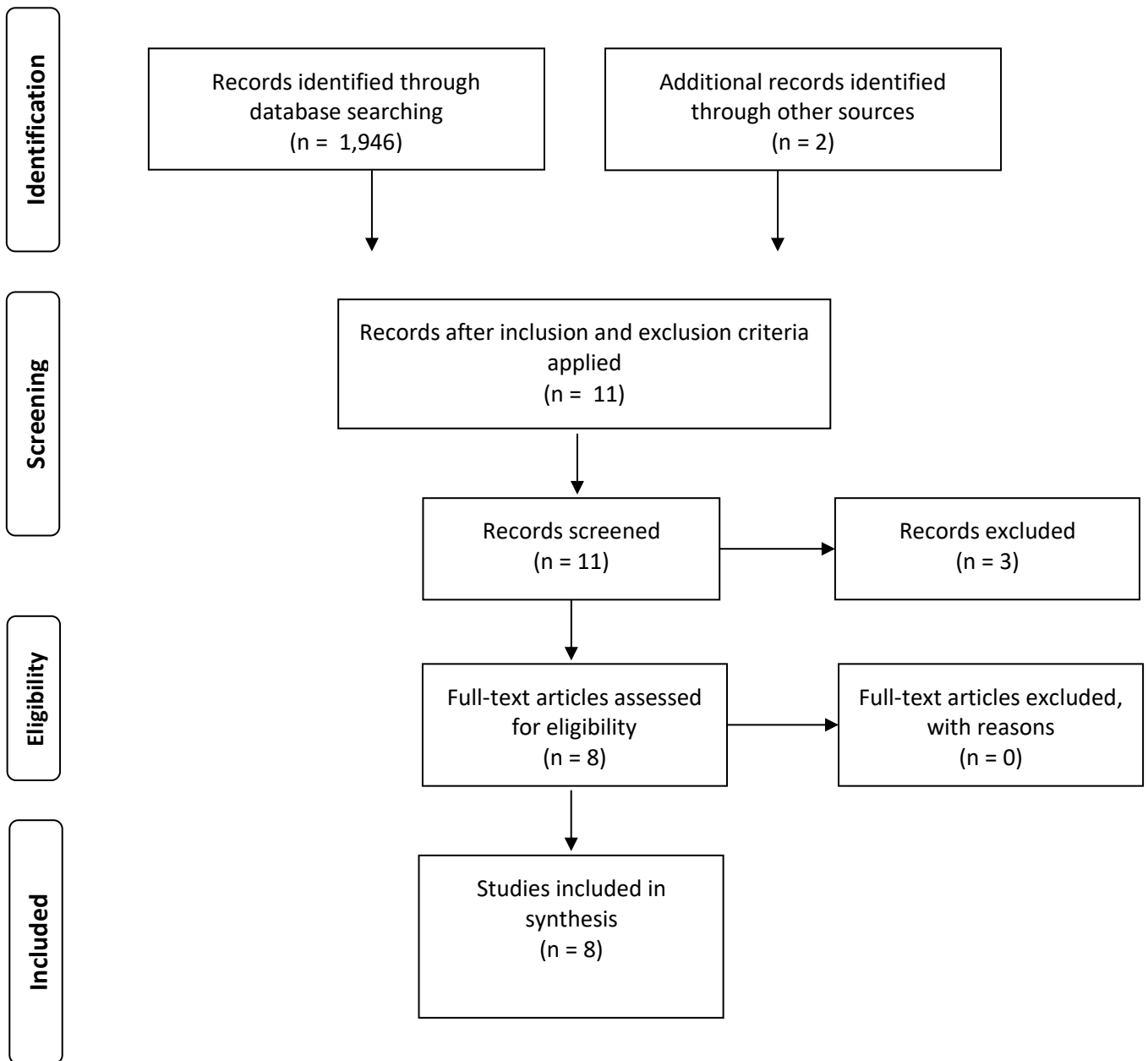
1. Child* OR adolesc* OR juvenile OR minor OR teen* OR you*
2. Victims OR bystander OR eyewitness* OR spectator
3. Credibility OR Integrity OR reliability OR trustworth* OR validity OR believability
4. Jury OR juror OR layperson
5. Perception OR attitude OR impression OR judgement OR opinion
6. Emoti* OR affect OR reaction OR empathy or respons*

Sources of Literature

A systematic search was conducted using the search terms on the 3rd of August 2019, using five databases: OVID Psycinfo, Web of Science, Scopus, Social Services Abstracts, and Wiley Online Library. A total of 1,946 articles across the databases were identified. An initial scoping of these studies excluded 1,863 for not meeting the inclusion criteria. This resulted in a total of 83 articles put forward for a screening of the abstract for relevance. Once the 83 articles were screened using the inclusion/exclusion criteria, nine articles remained. A further two articles were identified through hand searches of the reference lists of the included papers, taking the total number of included papers to eleven. I contacted a leading researcher in the field who was able to provide some background reading, but no further research for inclusion in the review. Next, the full articles were screened, and three studies were excluded because they did not meet the inclusion criteria. Therefore, eight studies remained to be included in the review (see Figure 1.1).

Figure 1.1

Prisma Flowchart of article screening processes



Quality Assessment

The CASP quality assessment tool (Critical Appraisal Skills Programme, 2018) applied to the eight studies had eleven questions (see Table 1.2, see Appendix One).

Table 1.2

Quality Assessment Questions on the CASP (Critical Appraisal Skills Programme, 2018)

Number	Question
1	Did the study address a clearly focused issue?
2	Was the assignment of participants to conditions randomised?
3	Were all of the participants who entered the trial properly accounted for at its conclusion?
4	Were participants and researchers ‘blind’ to treatment?
5	Were the groups similar at the start of the trial?
6	Aside from the experimental intervention, were the groups treated equally?
7	How large was the outcome measure?
8	How precise was the estimate of the outcome?
9	Can the results be applied to the local population, or in your context?
10	Were all clinically important outcomes considered?
11	Are the benefits worth the harms and costs?

The first three questions were used to identify quickly if a paper should be excluded and the remaining eight questions to assess sampling, performance and measurement biases, size of outcome effects, and ethical issues. Each question was weighted equally with a Yes (9 points), No (0 points), or Partial (4.5 points) scoring system used to calculate a total quality percentage score out of 100 reflecting overall quality. The CASP (2018) does not provide a cut off or scoring system, due to it being designed to be used as an educational pedagogic tool. The CASP method of quality assessment primarily provides a means of weighting the importance of each paper

within the studies included in the review, so I set a liberal cut-off and decided that papers with a quality score over 50% would be deemed robust enough to be included. Quality scores ranged from 72% to 94.5% (see Table 3), thus all eight studies were included.

Data Extraction

Data from the studies were extracted using a form adapted from the Cochrane Collaboration (see Appendix Two). The sub sections included on the form were: general information, eligibility, methods, outcome measures, results, and key conclusions.

Table 3 summarises the salient data from each article as extracted during this process.

Table 1.3*Extracted Article Information*

Author and year	Participants	Study aim	Child age and gender	Crime type	Measures	Experimental manipulation	Quality score
Bederian-Gardner et al. (2017)	Undergraduate students who received course credit ($N = 354$. 62.4% female, 37.6 male. M age = 20.5 years, range 18–40 years).	To explore the role of empathy in adult judgements of child victims.	5 or 13 years Male or female	Sexual assault	-Participants completed the Child Victim Empathy Scale pre and post-test (validated scale). -Rated how sad the child appeared (7-point Likert scale). -Rated how believable the child was (6-point Likert scale). -Rendered a decision regarding defendant guilt (dichotomous choice) and confidence in that decision (12-point Likert scale).	-Emotional presentation of low, medium, and high sadness (photo).	94.5%
Cooper et al. (2014)	Sample one: Undergraduate students who received course credit ($N = 308$. 51.9% male, 48.1% female. M age = 20.8 years, range 18–47).	To explore if older jurors, with more experience of children, would rate an emotional child as more credible than a younger juror with less experience of children.	6 or 12 years Male or female	Sexual assault	-Participants completed a questionnaire measuring child and defendant intelligence, honesty, accuracy, believability, confidence, likeability, consistency and memory for understanding of the event (6-point Likert scales). Questions were modelled from previous studies.	-Emotional presentation of child as sad and tearful versus calm and neutral (line drawing).	76.5%

Author and year	Participants	Study aim	Child age and gender	Crime type	Measures	Experimental manipulation	Quality score
	Sample two: Jurors released from duty paid \$10 ($n=267$. 49.1% male, 50.9% female, M age = not stated, range 20–80). (total $N=575$).				-Rendered a decision regarding defendant guilt (dichotomous choice) and a guilty rating question were asked (the latter a 6-point Likert scale). Final question asked how emotional the child was (6-point Likert scale).		
Golding et al. (2003)	Undergraduate students who received course credit ($N = 150$. 54.7% female, 45.3% male. No information on age presented apart from over the age of 18).	To explore the effect of child victim demeanour on jury credibility ratings in a sexual assault case.	6 or 15 years Female	Sexual assault	-Participants made decisions regarding guilt (dichotomous choice) and ratings of believability of child victims (10-point Likert scale). If guilty decision given, participants were asked to give a sentencing opinion (based on the local laws for the area; up to life for the 6 year old child and up to 20 years for the 15 year old). -Confidence in the verdict was measured (10-point Likert scale).	- Emotional presentation of either calm, teary, or hysterical crying (trial summary description and courtroom drawing of the child).	90%

Author and year	Participants	Study aim	Child age and gender	Crime type	Measures	Experimental manipulation	Quality score
Landström et al. (2015)	Undergraduate students who received a €10 cinema ticket ($N = 155$. 58% female, 42% male. M age = 23.21 years, range 20 to 38 years).	To explore the impact of child victim demeanour during testimony and the effects of the camera perspective on credibility judgements.	8 years Male or female	Harassment	-Participants completed rating scales for authenticity, credibility and expectancy confirmation (7-point Likert scales).	- Emotional presentation of either sad or neutral (video recording).	81%
Melinder et al. (2016)	Undergraduate students ($N = 465$. 66% female, 44% male. $M = 23.43$ years. Range 15-64 years).	To explore the impact of child victim demeanour during testimony and the effects of presentation mode on credibility judgements.	11 or 13 years Female	Physical abuse	-Participants rated the credibility and believability of the child victim and the reliability of the testimony provided (7-point Likert scales).	- Four different emotional presentations of sad, angry, happy or neutral. - Video recording, audio recording, or written transcripts to examine presentation mode.	81%
Wessel et al. (2013)	Sample one: Undergraduate students ($n =$	To explore the impact of child victim demeanour	11 years old Female	Physical abuse	-Participants rated credibility of the child (7-point Likert scale) and likelihood of guilt	- Four different emotional presentations of	72%

Author and year	Participants	Study aim	Child age and gender	Crime type	Measures	Experimental manipulation	Quality score
	162. 63% female, 37% male. <i>M</i> age = 28 years, range not stated). Sample two: Child protection workers (<i>n</i> = 154. 89% female. <i>M</i> age = 39 years, range not stated).	during testimony and the impact of experience of working with children on credibility judgements.			(percentage scale from 1 to 100).	sad, angry, happy or neutral. (Video recording).	
Wessel et al. (2016)	Undergraduate students (<i>N</i> = 119. 59% female, 41% male. <i>M</i> age = 22.7 years, range 19 to 49 years).	To explore the impact of child victim demeanour during testimony on credibility judgements.	11 years Female	Sexual abuse	-Participants rated credibility (7-point Likert scale) and rated the likelihood of the perpetrator being guilty (100-point percentage scale).	- Four different emotional presentations of sad, angry, happy, or neutral. (Video recording).	76.5%
Regan & Baker (1998)	Undergraduate students (<i>N</i> = 31. 64.5%	To explore the impact of child victim demeanour	6 years Female	Sexual abuse	-Participants rated the credibility, honesty and reliability of the child and the	- Emotional presentation of the child victim	81%

Author and year	Participants	Study aim	Child age and gender	Crime type	Measures	Experimental manipulation	Quality score
	female, 35.5% male. <i>M</i> age = 18.39 years, range not stated) who received course credit.	during testimony on credibility judgements.			likelihood of guilt (9-point Likert scales?).	(crying versus neutral presentation).	

Results

The eight articles demonstrate that the presence of emotion in child victim testimony influences mock juror perceptions of credibility. In the sections that follow, I discuss how mock jurors' credibility judgements may be influenced by the following factors: emotional (e.g., sad) versus neutral presentation, different types of emotional presentation (e.g., sad, happy, angry, and neutral), empathy, age of child victim, and gender of the participants. I first provide a brief overview of the included studies.

Overview of Studies

The key experimental manipulation in all studies was the emotional presentation of the child, with varying presentations across the studies of sad, angry, happy, or neutral. In all of the studies, participants were randomly allocated into the emotional presentation conditions. Three of the studies compared sad versus neutral presentation (Cooper et al., 2014; Landström, et al., 2015; Regan & Baker, 1998); two compared different amounts of sadness (low, medium, and high sadness, Bederian-Gardener et al., 2017; calm, teary, or hysterical crying, Golding et al., 2003); and three compared sad, angry, happy, and neutral emotional presentations (Melinder, et al., 2016; Wessel et al., 2013; Wessel et al., 2016). Across all studies, credibility was measured using rating scales which were individually designed and applied in each study. Five studies also asked participants to rate defendant guilt (Bederian-Gardener et al., 2017; Golding, et al., 2003; Regan & Baker, 1998; Wessel et al., 2013; Wessel, et al., 2016).

In total, the eight studies sampled 2,148 participants: 1,323 females and 825 males. All of the studies recruited participants from student populations and two of the studies also recruited non-student comparison groups (Cooper et al., 2014; Wessel et al., 2013). Unsurprisingly, the age range for the non-student comparison groups was

slightly wider (18 to 80 years old) than the age range for the student groups (18 to 64 years old). Four studies were conducted in the United States of America (Bederian-Gardener et al., 2017; Cooper et al., 2014; Golding et al., 2003; Regan & Baker, 1998), three in Norway (Melinder et al., 2016; Wessel, et al., 2013; Wessel et al., 2016), and one in Sweden (Landström et al., 2015). The main findings from each study are outlined in Table 4 below.

Table 1.4

Main Findings of Studies

Author and Year	Findings
Bederian-Gardner et al. (2017)	<ul style="list-style-type: none"> - Increased appraised sadness significantly predicted increased perceived believability. - Participants who rated the child as believable were more likely to give guilty verdicts.
Cooper et al. (2014)	<ul style="list-style-type: none"> - Overall, students gave more guilty verdicts compared to jurors, and female students were more likely to give children higher credibility ratings than male students. Amongst jurors, females were more likely to render guilty verdicts than male jurors, and females were more likely to rate younger children as more credible than older children. -Participants who rated the child as more emotional were more likely to give guilty verdicts and considered both the older and younger child as more credible than participants who rated the child as less emotional.
Golding et al. (2003)	<ul style="list-style-type: none"> - The child presenting as ‘teary’ was more likely to be believed and receive more guilty verdicts than the child presenting as ‘calm’ or ‘hysterically crying’.

Author and Year	Findings
	<ul style="list-style-type: none"> - No significant difference in the mean number of guilty verdicts between the calm or hysterical conditions.
Landström et al. (2015)	<ul style="list-style-type: none"> - Participants who observed a sad emotional child were more likely to believe that the child had experienced the abuse, compared to the child in the neutrally presenting condition. - Compared to the neutrally presenting child, participants rated the sad child as making a more credible impression and rated that the child's demeanour better matched their expectations.
Melinder et al. (2016)	<ul style="list-style-type: none"> - Child victims were rated as more credible when they displayed the sad emotion compared with the angry and positive emotional expressions. - Written presentation mode gained higher credibility ratings than audio or visual recordings.
Wessel et al. (2013)	<ul style="list-style-type: none"> - Two groups (lay vs CPS) correlated highly on their ratings of credibility and subsequent probability of guilt. - Lay participants overall rated the victims' credibility significantly lower and with less guilty decisions. - Both sample groups rated the sad condition as more credible than the angry, happy and neutral presentations. This demonstrates that CPS workers are governed by the same social norms as lay people. - Highest ratings of credibility and guilty decisions were in the sad condition, followed by the neutral, then the anger condition, and were lowest for the positive condition.
Wessel et al. (2016)	<ul style="list-style-type: none"> - No significant difference in credibility ratings between the sad and neutral condition. Therefore, these two conditions were

Author and Year	Findings
	<p>combined and considered under broader term of ‘emotional valence’.</p> <ul style="list-style-type: none"> - Emotional valence was shown to elicit higher credibility ratings than the angry or positive conditions. - Participants who rated the child as more credible were more likely to give guilty verdicts.
Regan & Baker (1998)	<ul style="list-style-type: none"> - Participants who read about a child who cries upon confronting the defendant were more likely than those who read about a calm child, to perceive the child victims as honest, credible, accurate and reliable. - Participants who read a child was crying were more likely to believe the victim had been abused and conclude that the defendant was guilty.

Sad versus Neutral Presentation

Four of the papers in the review directly compared sad versus neutral presentation. All four of these studies found that the presence of emotion (e.g., sad) compared to a neutral or calm demeanour resulted in mock jurors rating the victim as more credible (Cooper et al., 2014; Golding et al., 2003; Landström et al., 2015; Regan & Baker, 1998). The above studies use different stimuli presentation modes (e.g., drawings, mock case study, scripts, and videos) but all demonstrated similar significant results; that an emotional child is more likely to be regarded as credible than a child who is presenting neutrally.

Emotion Type

Further research has investigated how different *types* of emotion (such as angry or happy presentations) influence credibility judgements. Three studies extend the sad and neutral/calm conditions to include angry and positive emotional presentations. Wessel et al. (2013) demonstrated across both students and CPS participants that the child victim was rated as most credible in the sad condition followed by the neutral condition, then the angry condition, and there was a significant drop in credibility rating for the positive condition. Melinder et al. (2016) found that when the child victim displayed sad emotions they were deemed to be significantly more credible than if the child presented as angry or positive. But in contrast to Wessell et al. (2013), Melinder et al. (2016) found the neutrally presenting victims were rated almost as credible as sad presenting victims. Wessel et al. (2016) did not find a difference in ratings of credibility between the sad and neutral presentation of emotion and they therefore combined these conditions to create an ‘emotional valence’ condition. The study concluded emotional valence (sad or neutral presentation) resulted in significantly higher ratings of credibility compared to angry and positive presentation.

Empathy

Only one study in the review (Bederian-Gardener et al., 2017) explored if juror empathy influenced the appraisal of the child’s emotional feelings and therefore judgements of credibility. Their study enlisted undergraduate students who observed pictures of children displaying low, medium and high levels of sad/teary expressions and asked to rate the level of emotion displayed, ratings of credibility, and complete a child victim empathy questionnaire before and after participation in the experimental stage. The juror’s appraisal of the child’s emotional presentation and empathy scores both predicted credibility scores of the child victims.

Age of Child Victims

The emotional victim effect has been found across studies using child victims of different ages (ages 5 to 15 in the studies reviewed here) suggesting that this phenomenon is observed across age groups. However, three studies have shown that child age may also influence credibility judgements. Cooper et al. (2014) found that female lay jurors rated younger children (6 years old) as more credible than male lay jurors who rated younger and older (13 years old) children equally. Bederian-Gardner et al. (2017) partly replicated this result, as their (male and female) participants rated younger children (5 years old) as more credible than older children (13 years old). Melinder et al. (2016) however found that older victims (13 years old) were considered significantly more credible than younger victims (11 years old).

Gender of Participants (Adult Jurors)

Seven out of the eight studies examined whether the gender of the participants influenced credibility judgments; this review highlighted that the credibility judgements varied by gender across all seven studies. Golding et al. (2003), Cooper et al. (2014), and Wessel et al. (2016) demonstrated that women were more likely than men to pass guilty verdicts. Regan and Baker (1998), Melinder et al. (2016) and Wessel et al. (2013) also found that female participants were significantly more likely to rate an emotionally presenting child victim as more credible than male participants. This finding was replicated by Bederian-Gardner et al. (2017) who found that female participants rated an emotionally presenting child victim as more believable than male participants did.

Type of Crime

The studies used different offence types, including familial sexual assault (Cooper et al., 2014; Regan & Baker, 1998; Wessel et al., 2016), interfamilial sexual

assault (Bederian-Gardner et al., 2017; Golding et al., 2003), familial physical assault (Melinder et al., 2016; Wessel et al., 2013), and harassment from peers (Landström et al., 2015). As such, it seems the emotional victim effect is found across crime types for child victims.

Presentation Mode

The studies used different combinations of stimuli including written transcripts (Bederian-Gardner et al., 2017; Cooper et al., 2014; Golding et al., 2003; Melinder et al., 2013; Regan & Baker, 1998), videotapes (Landström et al., 2015; Melinder et al., 2016; Wessel et al., 2013; Wessel et al., 2016), audio recordings (Melinder et al., 2016), photos (Bederian-Gardner et al., 2017), and drawings (Cooper et al., 2014; Golding et al., 2003). Again, the emotional victim effect was found across the studies, suggesting that it occurs regardless of presentation mode. However, one study by Melinder et al. (2016) directly compared presentation modalities in their study and demonstrated that when a child displayed as sad, transcripts elicited higher credibility ratings than video or audio recordings, suggesting that presentation mode might increase or decrease the size of the emotional victim effect.

Discussion

This review examined whether the emotional demeanour of child victims during testimony influences perceived credibility in mock jurors. This effect has been substantiated in adult female sexual assault complainants in a recent meta-analysis (Nitschke et al., 2019), but there has been no previous attempt to consolidate findings in the child victim literature. Despite considerable differences in samples and methodologies across studies included in the review, it was found that child victims who displayed a sad emotional demeanour were rated as more credible by adult mock

jurors than other emotional presentations such as anger, happiness, or neutral expressions. The following discussion will draw conclusions from this review, discuss the methodological issues that could have influenced the results, consider the implications of this review for practice, and consider future research directions.

The review found an emotional victim effect; adult jurors were influenced by the emotional presentation of a child victim, and deemed children who present as sad as more credible than those who do not. Moreover, the proportionality of the emotion appears to impact on credibility judgements. In accordance with expectancy violation theory, the proportionality of the emotional response influenced subsequent ratings of credibility (see Rose et al., 2006). For example, Golding et al. (2003) found that the hysterical child in their research was deemed less credible than a child presenting as teary. They concluded that it is not simply a case of the presence of sad behaviour (such as crying) leading to an increase in ratings of credibility; it appears that too much or too little emotion negatively impacted participants' judgement of the child's believability. These findings replicate and extend findings in the adult literature with female sexual assault complainants (Nitschke et al., 2019; Rose et al., 2006). This review found the presence of the emotional victim effect across a range of crime types (e.g., sexual assault, physical assault, harassment), whereas the adult literature has mainly investigated the emotional victim effect in female sexual assault victims. Some research on male victims (e.g. Landstrom et al, 2015; Rose et al, 2006) and victims of other types of crimes have failed to replicate the emotional victim effect in adult populations (Bosma et al., 2018). This review also extends understanding by considering the type of emotion displayed (anger, sadness, happy, and neutral) which has not been considered

in previous adult research. This review found that angry, happy, and neutral presentations are often rated as less credible than sad presentations.

There are at least two mechanisms by which a victim's emotional presentation influences juror credibility judgements. First, emotion violation theory predicts that jurors hold cognitive biases including preconceived notions, stereotypes and social expectations of how the child should present in court; the social norms governing expectations of how a victim should respond impacts on subsequent credibility ratings. If the child does not present in the expected congruent manner (e.g., sad), the adult is less likely to believe that the child is credible and attribute this to internal factors within the child, such as deception (Ross, 2018). Second, it may be that a sad demeanour in a child elicits an empathetic caregiving response in the adult, compared to angry, happy, and neutral presentations (Bederian Gardner et al., 2017). In contrast, a child presenting with an angry demeanour may produce different emotions in adults such as an angry or avoidant response. Therefore, the emotional victim effect may be also influenced by the compassion affective response. Indeed, Landström et al. (2015) concluded that a sad child better matched the participants expectations of how the child should respond compared to a neutrally presenting child, but also showed that participants had an affective response to the sad child victims. Therefore, as posited by Ask and Landstrom (2010), a combination of the cognitive and affective responses are likely to be responsible for the emotional victim effect. The two explanations (cognitive and affective) are not mutually exclusive, so future research is needed to isolate and understand the relative importance of each mechanism.

Regardless of the underlying mechanism, the fact that jurors are influenced by child victim presentation is concerning because emotional presentation does not

accurately indicate that victims are honest and reliable, and crime victims' emotional reactions differ dramatically. According to a trauma framework, a child will present in a unique manner dependent upon their coping mechanisms and recovery following trauma (Kanan & Plog, 2015). Some research is beginning to show that children display a variety of emotions during disclosure including happiness, anger, sadness, anxiety, shame, and guilt (Wood et al., 1996). Therefore, determining a child's credibility based on emotional presentation alone is unreliable, and could lead to poor legal decision-making. Future work should aim to better understand the variety of responses demonstrated by child victims in the criminal justice system and practitioners (and possible lay jurors) should be informed about the different ways in which a traumatised child may present during a criminal investigation.

The review also discussed possible factors that influenced credibility judgements, such as the gender of participants, the age of the child victim, and the presentation mode. These factors were often not consistently considered throughout the methodology of the eight studies or directly compared in a single study, therefore it is only possible to speculate on their impact. Nevertheless, there were some consistent trends across studies. First, seven out of the eight studies compared male and female participants, and females were consistently more likely to consider the child as credible compared to males (Bederian-Gardner et al., 2017; Cooper et al., 2014; Golding et al., 2003; Regan & Baker, 1998; Wessell et al., 2013; Wessel et al., 2016). It is not clear why a gender difference is observed; however, Wessell et al. (2013) theorise that women may be more empathically accurate than men (Bederian-Gardener et al., 2017). Previous research indicates that females make significantly more pro-victim judgements, influenced by attitudes and empathy (e.g., Baldry et al., 1997; Bottoms et

al., 2014). Overall, the studies included in this review provide evidence for female participants generally rating children as more credible when they emotionally present in a manner that is congruent with their expectations.

Second, the age of the child may influence credibility ratings. Four of the eight studies compared child age. In three of these studies the target offence was sexual abuse and these studies found that younger children (aged 5 to 6 years old) were deemed more credible than children aged 11 to 13 years. It is possible that younger children (5 or 6 years old), who are assumed to lack the sexual knowledge and experience to be able to fabricate stories (Antrobus et al., 2016; Brown & Lewis, 2013; Eaton et al., 2001; Ross et al., 2003), and to be more naïve about the harmful impacts of sexually abusive behaviour, would be considered to be more likely to be telling the truth, and therefore rated as more credible, than older children (11 or 13 years old) who are assumed to have more sexual knowledge and an understanding of the serious nature of the allegations. However, it should be noted that this conclusion is tentative, because children's understanding of sexual crimes is highly individual (Bottoms et al., 2003). It is a limitation of the current literature base that studies tend to involve younger children (5 to 6 years old) or slightly older children (11 or 13 years old). Research has not yet examined children under 5 years, between 6 and 11 years and over 13 years; future research would benefit from considering these gaps because it is possible that the relationship between child age and credibility judgements is non-linear.

Third, the emotional victim effect was observed across the different presentation modes used in the eight studies. It is possible however, that the size of the effect or the mechanism of the effect is different across presentation modes. Melinder et al. (2016) was the only study that manipulated the presentation mode in a single experiment and

found higher ratings of credibility for written presentations than audio or visual. This influence of presentation mode is inconsistent across the adult victims literature. For example, Nitschke et al. (2019) concluded that distress in female sexual assault victims increases credibility judgements despite the presentation model. However, Landstrom et al. (2019) demonstrated that live accounts of female interpersonal violence victims were rated as more credible than video evidence. Further research investigating presentation mode for child victims, or directly comparing child and adult victim populations across presentation modes, is required to bolster the current conclusions.

Limitations of the Current Research

Although it is clear that results were replicated across the studies included in this review, it is important to note that the literature available lacks a shared definition of credibility. This has led to unstandardised methodologies and outcome measures in the empirical research; and it is therefore difficult to definitively conclude that authors are measuring the same concept across studies. Credibility is a multifaceted construct, measured on the basis of observation and subject to various interpretations. Voogt et al. (2019), for example, argue that believability, honesty, truthfulness, suggestibility, accuracy, and reliability are constructs associated with credibility. The outcome measures throughout the eight studies appear to have been designed by the researchers without consideration of measures used in previous studies, which make it difficult to determine if measures have acceptable reliability, or content and construct validity. Therefore, future researchers may wish to consider standardising definitions across child victim research. A shared definition of credibility means that a collaborative outcome measure (that is shown to be valid and reliable) could be employed across studies (Voogt et al., 2019). A collective approach from researchers would arguably

serve to strengthen the overall evidence base and provide a consistent and versatile measurement for the multifaceted concept of credibility.

The eight articles in this review have employed a mock juror design; a method which has been hotly debated and also criticised for failing to simulate a real-life situation (e.g., see Golding et al., 2003). I will not repeat that debate here, but instead focus on several potential limitations in the child literature specifically, including sampling issues, stimulus and outcome measure issues, test condition issues and ethical considerations. These are considered next.

Sampling Issues

All eight of the studies reviewed recruited a student population sample, of which only three outlined the demographic nature of the sample beyond age and gender variation (Bederian-Gardner et al., 2017; Cooper et al., 2014; Regan & Baker, 1998). The mean age range of the student samples in the eight studies was 20.4 years (Bederian-Gardner et al., 2017) to 28 years (Wessel et al., 2013) demonstrating a young mean age across the studies. Two studies (Cooper et al., 2014 and Wessel et al., 2013) employed different samples in the form of jurors released from duty (mean age not given) and child protection service officers (mean age = 39 years).

Previously, research recruiting undergraduate students has been criticised for lacking generalisability. The student populations within the studies can be considered a homogenous group, meaning that it is easier to draw comparison across the studies, however lack of data from other societal groups with varying demographics means it may be difficult to apply the findings of the research to wider non-student populations. However, a meta-analysis of 53 mock juror studies conducted by Bornstein et al. (2017) found that credibility and guilt ratings did not vary across samples and concluded that

student mock juror studies can be a valid methodology. Juries are designed to consist of lay samples of the general public. Therefore, the current available literature may be a good first step towards understanding this phenomenon, but further research with other groups is needed.

Test Conditions

Worthy of note are the test conditions used across the eight studies. All of the studies required the participants to work individually in quiet conditions to avoid distractions. The studies also did not present other possibly relevant information such as other victims' statements, legal arguments, and other forms of evidence (such as physical forensic evidence), which may be available in a trial and which would inform the decision-making process (Melinder et al., 2016; Wessel et al., 2013; Wessel et al., 2016). The cognitive load experienced by jurors in real trials would not have been replicated in these studies which required a brief, intense focus of concentration on a small amount of information. On one hand, it is possible that participants were more influenced by the emotional presentation of the victim than they may have been in a real trial, because they had relatively sparse information to rely upon, and were therefore more likely to rely on their stereotypes to make credibility judgments. On the other hand, the heuristic-systematic model of information processing posits that heuristic processing occurs when information is more complex and requires more cognitive effort (Chaiken, 1980). Heuristic processing relies on previous knowledge stored in memory and tends to scrutinise information in less detailed ways than systematic processing, which is more analytic and likely to incorporate new information. Therefore, it is possible that jurors in real trials are more influenced by the emotional expression of the victim than participants were in the experiments, because they are more likely to utilise

heuristic processing, due to the amount of novel information they experience (Honest & Charman, 2002). Research in the future would benefit from addressing some of these shortcomings through closer replication of the cognitive load experienced by jurors in real life, which would serve to increase the ecological validity of the literature base.

In a real-life trial situation, countries with adversarial systems such as the United Kingdom and the United States of America, the jurors would also deliberate before passing a verdict. Groupthink is considered a cognitive bias in group decision making processes, leading to an increase in “defective decision making” (Neck & Moorhead, 1992, p.1007), and may also occur in juror decision-making (Cooper et al., 2014). The presence of groupthink in jury deliberations may serve to moderate the size of the emotional victim effect on individual juror decisions, due to the social pressures of the group. Several of the studies included in this review did state this omission in design as a limitation of their research (Bederian-Gardner et al., 2017; Cooper et al., 2014; Golding et al., 2003). As such, the impact of groupthink on deliberations should be considered for any future studies in this area. Moreover, qualitative research with real jurors may enhance understanding of the rich, detailed experience of juror decision-making in complex trials.

Strengths and Weaknesses of this Review

This literature review applied robust methodology to its searches, quality assessment, and data extraction, and the articles included were all rated as good quality. Nevertheless, only eight studies were included in the review. The initial searches and scoping identified a limited number of articles. I was also only able to search for articles published in the English language; inclusion of other languages may have increased the number of articles included, and future researchers may wish to do so. Finally,

publication bias occurs when articles are published on the basis of having significant findings which build on previously accepted hypotheses. All of the articles included in this review reported a significant emotional victim effect which built on previous research findings. It is possible that there is a publication bias in this field, with similar research that failed to find a significant result, or which challenges the previously accepted findings, not being chosen for publication. As others have noted (e.g., Cook & Therrien, 2017), it is important for scientific enquiry that null effects are also published and accessible to other researchers.

Practical Applications

Although the studies in this review were concerned with lay juror decision-making, it is important to consider that child victims in the criminal justice process will have been subjected to several tests of credibility prior to reaching the point of testimony. Regardless of country, each child will experience a series of encounters with professionals prior to trial, such as interviews with Police, Social Care and other professionals where judgements of credibility will be made. Moreover, children in some countries will provide testimony to judges, not lay jurors. This review highlights that people can rely on misleading information to form credibility judgments, and it is possible that professionals at other stages in the criminal justice process rely on potentially misleading heuristic processing. This has important implications, because professionals' credibility judgments are likely to impact how the crime is subsequently investigated and decisions made regarding the child's welfare (e.g., removal from the family home for child protection reasons). It would be appropriate for both practitioners and researchers to consider the emotional victim effect more broadly, not only at the

point of trial, but also at other victim-observer interactions throughout the investigation process.

As a concrete example, for many children who have experienced sexual violence, judgements of credibility can begin at the forensic medical examination. The World Health Organisation (WHO, 2003), states: “as medical records can be used in court as evidence, documenting the consequences of sexual violence may help the court with its decision-making as well as provide information about past and present sexual violence” (p. 94). Further, they state that health professionals should “include observations of the interactions between, and the emotional states of, the child and his/her family” (p. 84). In England and Wales, the Faculty of Forensic and Legal Medicine of the Royal College of Physicians has published the Paediatric Forensic Examination Pro Forma on their website (June 2020), which all forensic examiners are required to use in their practice. This form, which is admissible as evidence in any subsequent trial, compels the medical examiner to record the child’s demeanour/behaviour at the time of examination. The admission of this information in any subsequent trial is likely to be subject to the same heuristic processing outlined in this review and could potentially influence subsequent ratings of credibility. Given that a child’s emotional reaction is not a reliable indicator of accuracy or truthfulness, it seems reasonable to suggest that reference to the child’s demeanour or behaviour during forensic medical examination be removed from official forms and records, or be deemed inadmissible as evidence in any subsequent trial. Again, we urge other researchers to consider the broader implications of credibility judgements made by different professionals and at different stages of the criminal justice system.

Another important consideration for forensic practice is that, in real life, rehearsal effects could impact on the child's presentation in court, possibly making them appear calmer than on first disclosure. Pre-court conversations by well-intentioned adults (police, social services, caregivers) with the child might give them 'prompts' regarding how to present themselves in court. Court practitioners should be conscious of these influences before the child gives testimony and the judiciary should consider any impacts on admissibility of evidence and in their instructions to the jury. Moreover, rehearsal and repeated interviews have been shown to encourage reminiscence, aid rapport with the child, aid disclosure, and also to help the child emotionally regulate during distressing conversations (Brubacher et al., 2019). As such, children giving evidence in court may be relatively calm, and deemed to be less credible than if the jurors had seen the child at first disclosure. This is further evidenced in the Home Office evaluation of the instigation of live link in England and Wales (Davies & Noon, 1992) which demonstrated that children giving evidence via this medium displayed greater composure (fewer tears) compared to children who gave evidence in the traditional live model.

The findings of this review also highlight the need for consideration of support that can be offered to jurors during trials to better interpret the emotional expressions of child victims. It may be prudent to consider experts being employed as standard practice in all cases where a child is appearing as a victim, or extending the use of trained intermediaries or Child Independent Advisors to help the child communicate with the court. In England and Wales, intermediaries are employed to facilitate the communication between the child and the courtroom and should be considered if there is concern a child is unlikely to communicate that they do not understand a question,

challenge an adult in authority or be able to challenge problematic questioning (Ministry of Justice, 2011; Judicial College, 2013) . Both of these suggestions would come at a financial cost to the legal system, but would create a role for professionals to educate jurors on both emotional presentation and trauma responses. An alternative method to support jurors, would be to consider judicial instruction. Swedish courts, in 2010, started instructing juries to place less weight on non-verbal behaviours when making assessments of credibility (Landström et al., 2015). Additionally, Connolly et al. (2008) demonstrated that the inclusion of a judicial declaration of child competence increased the credibility ratings of child victims compared to control groups who received no such declaration. Adoption of a similar method in other countries may help to mitigate the emotional victim effect, and help jurors to rely on more systematic processing of information. However, within adversarial systems such as England and Wales, which expect jurors to make decisions on credibility as part of their role, judicial instruction to ignore emotion could imply the judge has made a judgement that the child is unreliable. Such judicial declarations of competence could undermine the simplicity of the current competency test which requires a child under the age of 14 to state they will not lie during testimony (Spencer, 1992).

A final point to consider that has not yet been considered by research, is that some young victims may present incongruently to jurors expectations due to additional needs such as learning difficulties or neurological issues (Autism Spectrum Disorder, for example). Mandell et al. (2005) state that 18.5% of adult caregivers of children with autism report their child had experienced physical abuse and 16.6% reported experiences of sexual abuse. It has previously been recommended that a child's needs should be identified early in the legal process and special measures put into place to

help the child communicate (Bottoms et al., 2003), but it is also crucial to consider how these individual differences may impact on the child's non-verbal emotional presentation at court. Children who have additional needs such as a neurodiverse presentation and learning difficulties are more likely to present in an incongruent way to juror expectation (Bottoms et al., 2003; Brown & Lewis, 2013; Crane et al., 2018). Therefore, these cases should arguably be prioritised in terms of jury education by experts and intermediaries to prevent legal-decision makers relying on misleading cues to determine victim credibility.

Conclusion

Perceptions held by jurors appear to have profound real-life consequences for the parties involved; such as the defendant being found guilty of an offence, or the victim not being believed. This review indicates that the emotional presentation of a child victim influences juror ratings of credibility, which is concerning, as it may result in misleading conclusions about the accuracy and truthfulness of a child's account. Further research should attempt to explore how different factors influence the emotional victim effect, exploring the proportionality of emotion (Golding et al., 2003), and the role of groupthink in jury deliberations, when combined with emotionally presenting child victims. Researchers should contemplate the introduction of standardised definitions of credibility and design outcome measures that can be replicated throughout the research. In practice, court practitioners and policy makers should consider how reliance on a child's emotional presentation can be mitigated in making credibility judgements; either by the employment of experts and professionals to guide jurors or judicial instruction. Finally, both researchers and practitioners should consider the

influence of a child victim's emotional presentation at other stages of the criminal justice process, such as disclosure and interview.

CHAPTER THREE

“Every Young Person is Different”: A Qualitative Analysis of Professionals’ Perspectives on the Introduction of Section 28 Pre-Trial Cross-examination

Abstract

Chapter Two found that the emotional presentation of child witnesses impacts on subsequent adult jurors' perception of the child's credibility. Another area of concern regarding child witnesses is the impact of cross-examination methods on both the accuracy of their evidence and the potential retraumatising consequences. Regarding young witnesses, it is widely assumed in the realm of adversarial legal systems, that cross-examination is the most effective method to ascertain the truth. However, the psychological literature base demonstrates that the accuracy of cross-examination can be impacted by age, individual differences, question type and delay (Zajac et al., 2012). Moreover, cross-examination can be a distressing experience for young witnesses (Robinson, 2015). The introduction of Section 28 pre-trial cross-examination in courts throughout England and Wales is an attempt to improve the experiences and evidence quality of young witnesses. It is vital to consider how the implementation of the scheme affects the young people testifying in this way and the work of professionals delivering it. This study explores insights from 13 professionals (seven police officers and six charity workers) who were interviewed to gather their perspectives on the implementation of the Section 28 scheme. Three superordinate themes were identified: (a) court as a distressing experience for young people, (b) need for careful application, and (c) the impact of Section 28 on defendants. These are discussed in the context of the literature base. Limitations of the research and suggestions for future practice are considered.

Introduction

Young people, aged 18 and under, called as witnesses in criminal trials in England and Wales, are currently encouraged to give their testimony in live court. A gamut of special measures have been introduced (Youth Justice and Criminal Evidence Act, (s.16-30), YJCEA, 1999) to help support this population to give their best possible evidence following the publication of the Pigot Report in 1989. Such measures include: (i) the inclusion of pre-recorded Achieving Best Evidence (ABE) interview footage as the young person's evidence in chief (Section 27); (ii) access to live link whereby the young person gives evidence from a different room via video; (iii) physical screens to shield the young person from the rest of the courtroom; and (iv) the removal of wigs and gowns.

The Pigot Report (1989) recommended the introduction of pre-trial cross-examination (Section 28) whereby the young witness's cross-examination is recorded prior to the commencement of the trial in the presence of the judge, prosecution and defence representatives. Conditions which need to be met in order to initiate section 28 for young witnesses currently are that the witness is under the age of 18 years old, where the child has given their account in a video recorded interview under achieving best evidence principles (Section 27), and the trial is being heard in a crown court. The pre-recording replaces the live cross-examination in the trial process and would be played to the jurors during trial alongside the ABE (Section 27) interview footage. The YJCEA (1999) provided the legal basis for pre-trial cross-examination (Section 28) but this was left unimplemented for many years. This was largely the result of concerns from researchers, policy makers and practitioners that its use could potentially hinder the case of the defence (McEwan, 1990).

While these concerns prevailed, growing recognition of the negative impacts of delays in the court system affecting memory recall and the conclusion of the case for vulnerable young witnesses, led to a resurrection of the Section 28 debate in 2016. The Ministry of Justice conducted a pilot scheme of its use in Liverpool, Leeds and Kingston Crown courts. The results suggested that practitioners believed pre-trial cross-examination enables witnesses to better recall events, feel less pressure, and significantly reduces delays both of trials coming to court and within the trial process, compared to traditional methods of in court cross-examination (Baverstock, Ministry of Justice [MOJ], 2016). In the pilot study, interviews with professionals (including police, prosecutors, defence counsel, judiciary, ushers, clerks, intermediaries and witness service) highlighted that most felt the shorter delays helped to aid witness recall, yielded better quality evidence, and improved the experience for witnesses overall. However, some professionals also suggested issues with the implementation of the new method, including delays in identifying vulnerable witnesses who would qualify to provide evidence under Section 28 (Baverstock, [MOJ], 2016).

The Ministry of Justice subsequently issued a joint statement with the Lord Chief Justice of England and Wales and the Senior President of Tribunals (Transforming our Justice System, 2016), announcing the planned implementation of Section 28 pre-trial cross-examination for vulnerable children across all courts in England and Wales from 2017. Plotnikoff and Woolfson (2019) state that Section 28 has “proceeded in fits and starts” (p. 84) with the significant delays experienced as a result of technological complications. As of the end of 2020, pre-trial cross-examination was made available to all young people appearing as witnesses in Crown courts (MOJ, 2020). A significant number of young people give evidence in criminal

trials throughout England and Wales (see Chapter One). Therefore, it is vitally important that we understand the implementation of the pre-trial cross-examination scheme.

The Purpose of cross-Examination

In English law the adversarial nature of the justice system determines that a defendant has the right to cross-examine an accuser in live court (European Convention on Human Rights, 1998; article 6(1) the right to fair trial, and article 6(3) the right to examine witnesses under him, Hoyano, 2001). Counter to this, the prosecution holds a burden of proof to demonstrate “beyond reasonable doubt” that the accused committed the offence for which they are on trial (Myers, 2017); the consequence is that witnesses to the alleged crime must be robustly cross examined to ensure truth is determined. This juxtaposition of perspectives regarding the nature of cross-examination has long been debated in the literature with proponents from both sides arguing for the rights of the defendant to fair trial versus the need to safeguard vulnerable witnesses. For example, Hoyano (2001) asks whether Section 28 will allow the defendant the right to fair trial as per Article 6(1) of the European Convention on Human Rights (ECHR, 1950) and in particular the right of a defendant to examine witnesses against him under Article 6(3)(d) of the Human Rights Act (1998). As stated by Jaffe et al. (1987) “The focus in court often appears to be unfairly balanced on the side of protecting the defendant's rights and establishing the competency of the child witness and his/her ability to give sworn evidence, rather than on ensuring that the child's story is heard” (p. 291). Cordon et al. (2003) concur, stating that often the young person's rights are “at odds with those of the defendant” (p. 176).

The hearsay rule previously meant that admittance of second-hand testimony as material evidence, such as written evidence from a police officer who interviewed the witness, is not permitted. This means that adult advocacy in court, and written or otherwise recorded statements were not treated as admissible as evidence (Spencer, 1992). The Criminal Justice Act (2003) now permits hearsay evidence in certain circumstances but, due to the adversarial nature of the criminal justice process in England and Wales, there is a preference for oral evidence (Roberts, 2010). Therefore, it is difficult to provide proof other than direct oral evidence from the young witness. Myers (2017) argues however, that completely abandoning the cross-examination process, or limiting it to best forensic interview guidelines, would unfairly benefit the prosecution. The time delay between the suggestion of pre-trial cross-examination by the Pigot Committee (1989) and the published pilot study (2016), a total of 27 years, further highlights the strong division in perspectives regarding the function of cross-examination and the rights of both the witness and the defendant.

Best Possible Evidence: Advantages of Implementing Section 28

Psychological researchers have long been interested in understanding the experiences of child witnesses in criminal trials due to the potentially retraumatising impact of cross-examination. The main supposition behind the Pigot report (1989) is that young people's involvement in criminal trials should be expedited quickly and they should be afforded the possibility to give evidence in circumstances which do not overwhelm them. In a briefing paper produced for the Home Office, Birch and Powell (2004) argued that the main aims of expediting the process and removing the young person from a traumatic situation had been achieved through the introduction of the other special measures, and the introduction of Section 28 would therefore be

superfluous. Advocates for the introduction of Section 28, however, argue that the application of current special measures has been inconsistent and more reliant on the whim of the presiding judge rather than decisions made regarding the best outcome for the young witness (Flin et al., 1992; Henderson, 2016). If so, then the needs of the witnesses are not consistently being met and there are young people who are not being afforded the best possible opportunity to give evidence in comfortable surroundings. I will examine the current psychological literature regarding the impact of current cross-examination processes on linguistic processes, memory recall, the retraumatising effect of cross-examination on young witnesses, and the legal and financial implications of the Section 28 scheme.

Young Witness Best Evidence: The Linguistics of Cross-Examination

The literature base for young witness reliability and linguistics is well established with one of the dominant theories being Brennan and Brennan's (1988) concept of Strange Language. This theory posits that young witnesses are subjected to complex and unfamiliar linguistic situations, due to cross-examination being placed in a discourse of denial (Brennan, 1995). The premise of discourse of denial is that the language used within the courtroom is 'strange' or 'alien' to the young person. Such language can include words which are developmentally inappropriate for the young person or include complex sentence structure such as double negatives (e.g., "I put it to you that your version of events is not without inaccuracies"). The power imbalance between adult professional and young person is therefore inequitable and, as such, the young person is susceptible to the leading and suggestible questioning put forth by the defence during cross-examination. As stated by Cordon et al. (2003) "lawyers frequently use developmentally inappropriate and often confusing language, requiring

young people to answer questions that are both semantically and syntactically too complex for them to understand” (p. 171). Legalese, the legal language applied by adult professionals, is therefore problematic for young witnesses (La Rooy et al., 2016). Spencer (2011) argues that judges and magistrates are “entitled to intervene to stop a line of cross-examination that appears to be confusing the witness in such a way as to produce answers that are untrue or misleading” (p. 300), but such challenges to these types of inappropriate questioning relies on being identified by the judiciary and it is not clear how frequently interventions are appropriately made.

The evidence base relating to the impact of leading and suggestible questions during cross-examination is compelling. It has been argued that the purpose of cross-examination is to damage credibility through the introduction of leading, suggestive, and complex questions which impact the reliability of the young witness’s responses (Andrews et al., 2015; Cossins, 2009; Zajac et al., 2012). Indeed, Sutherland et al. (2007) suggest that cross-examination may be the antithesis of an effective forensic interview as it actively promotes the use of leading questions. In one study, highlighting the dangers of leading questions, O’Neill and Zajac (2013) invited 82 five and six-year-olds to witness an event and to participate in a successive interview either one week or six months later. They concluded that young people’s accuracy is significantly impacted following a cross-examination style interview and this approach is detrimental overall to accurate testimony compared to direct examination questioning that involved both open and closed questioning styles. Zajac et al. (2018) examined the nature of cross-examination questions asked in the 1950’s compared to the present day and found that such questions have been consistently leading and suggestive across time; however,

contemporary young witnesses were more likely to be asked more open ended and complex questions.

Cross-examination styles, and complex language use, have been found to introduce enough doubt in children's minds that they were willing to change their initial answers despite being initially accurate (Jack & Zajac, 2012; Segovia et al., 2017; Zajac & Hayne, 2003). Together, this illustrates that cross-examination questioning techniques, even in present day, are likely to result in inaccurate and poor-quality reports from young people compared to a more direct, open style of questioning.

Although many agree that cross-examination style questioning has a negative impact on accurate recall, the research base has rarely considered how cross-examination questioning interacts with trauma memories. Zajac et al. (2012) have advised caution in the interpretation of memory research as many studies are reliant on the use of non-trauma memories which often do not reflect the traumatic qualities of memories experienced by real young witnesses of crime. The majority of studies therefore lack ecological validity as they do not, for valid ethical reasons, study trauma memories. Nevertheless, research seems to agree that cross-examination questioning methods are detrimental to both non-trauma and trauma memories. For example, Segovia et al. (2017) invited adult participants to an interview with misleading and non-misleading questions after watching a film with a graphic car accident. They conclude that accurate memories for a traumatic event are just as vulnerable to suggestive questioning styles in adults (such as the accusatorial nature of cross-examination) as memories for a non-traumatic event; it is possible to posit that a similar effect would be seen in populations of young witnesses.

As discussed in Chapter One, early research into the use of Section 28 seems to suggest that the use of ground rules hearings appears to be regulating questioning styles of defence lawyers including the use of suggestive questioning and linguistically difficult language (Henderson et al., 2018). Research, however, is limited.

Young Witness Best Evidence: Memory, Recall and Cross-Examination

The ability of the young witness to access their memories and recall accurately under cross-examination has been a focus of much psychological research. In practice, memory recall during cross-examination can easily be manipulated by being asked leading questions that infer an answer (Jack & Zajac, 2012; Segovia et al., 2017; Zajac & Hayne, 2003). As such, young people are depicted as poor witnesses and are often considered to be fallible (Westcott & Page, 2002). The defence often uses leading questions to demonstrate that a young person is ‘prone to flights of fantasy’ (Cordon et al., 2003, p. 177), and that they should therefore be considered to be an unreliable witness.

The time delay between experiencing the event and cross-examination is also a serious issue for the administration of justice, especially as current practice in England and Wales often sees delays of up to two years before trial commencement. A delay of two months can cause significant detriment to memory recall (Martin & Thomson, 1994; see also Spencer, 1992). For example, O’Neil and Zajac (2013) conducted a study with two groups of young people aged between 5 and 6, and between 9 and 10. The participants witnessed an event and were interviewed after one week and then six months later. Memory accuracy decreased over time, especially in the 5 to 6 year olds. This is supported by previous research conducted by Zajac and Hayne (2003), who interviewed 5 and 6 year-olds using a cross-examination questioning style following

witnessing a contrived event. Participants were more likely to change their original responses following longer time delays combined with cross-examination questioning, compared to after a shorter time delay. The consequence of children changing their responses after a long delay was lower levels of accuracy. In short, many agree that a longer delay before memory recall, combined with a leading questioning style, can reduce the quantity or quality of young people's memory reports. Therefore, it is posited that pre-trial cross-examination may promote better memory recall due to less delays experienced overall.

Retraumatization of the Young Witness

Attending court as witness to a crime is a stressful experience for any individual but particularly so for young people (Hayes & Bunting, 2003; Knoche et al., 2018). Robinson (2015) states the concern that acting as a witness may serve to retraumatise the young person and Randell et al. (2018) conclude that pre-trial delay "makes everything worse" (p. 257). Stressors include: the prospect of cross-examination, facing the defendant, and feeling exposed by court procedures such as the questioning styles of the legal counsels (Randall et al., 2018). Advocates for young people in the Criminal Justice System (CJS) argue that the power balance in the procedure is weighted against them (Knoche et al., 2018). Quas et al. (2005) examined the long-term impacts on young witnesses over approximately 12 years and found that poor later adjustment was associated with a younger age at time of testimony, repeated experiences of giving testimony, and lenient sentencing of the defendant.

The process of cross-examination, if mishandled, can compound the negative experience of a young witness. The traumagenic model (Finklehor & Browne, 1985) provides a conceptual framework for understanding the dynamic process of trauma

resulting from sexual abuse. Finklehor and Browne (1985) posit that four trauma-causing factors interplay in a unique way: traumatic sexualisation (the process whereby the young person's sexuality develops in an inappropriate fashion due to abuse), betrayal (the realisation that a trusted individual has caused them harm), powerlessness (leaving the young person disempowered) and stigmatisation (the negative self-image caused by feelings of guilt and shame). Finklehor and Browne (1985) argue that these factors create trauma by: "distorting children's self-concept, world view and affective capacities" (p. 531). It is argued that cross-examination processes can replicate these trauma-causing factors and mirror the abuse the young person suffered as a result of the offence (Westcott & Page, 2002).

Hoyano (2000) outlines the potential benefits of Section 28 for traumatised young witnesses including that they would not have to face the person they have accused; even the potential of 'running into them' in the courthouse is reduced due to the pre-trial cross-examination occurring on an earlier date than the actual trial. Additionally, if a second trial is needed, the pre-recorded evidence from the first trial can be used meaning the young person does not have to appear as a witness again and therefore have to go through the same distressing experience twice. Davies and Hanna (2013) concur, stating that the main advantage of pre-trial cross-examination is less stress experienced by witnesses. Westcott and Page (2002) suggest that there are pockets of good practice for facilitating vulnerable witnesses to give their best evidence in court, but there are also examples of poor practice; there is therefore a need for a standardised approach. The advocates for Section 28 argue that this method would provide the standardised approach required to support traumatised young witnesses to give their best evidence.

Legal and Financial Advantages of Implementing Section 28

In addition to the psychological considerations outlined above, there are also legal and financial advantages related to the implementation of Section 28 proceedings. From the prosecution's perspective these include both the withdrawal or downgrading of charges at an earlier point as appropriate, following the young person's pre-recorded testimony and earlier defendant pleas. Both of these could mean the likelihood of a drawn-out process is reduced and less court time and resources are required (Hoyano, 2000). For the defence, potential benefits of Section 28 include sparing the defendant the public stigma of criminal trial as they would be able to advise their client better regarding the realistic prospect of conviction (Hoyano, 2000). Davies and Hanna (2013) concur, stating that pre-trial cross-examination can increase the likelihood of early guilty pleas from defendants. Similarly, during the pilot study, Baverstock (MOJ, 2016) found that 48% of cases with Section 28 hearings concluded with an early guilty plea compared to planned cross-examination at trial (9%). The above arguments highlight a system which could potentially be expedited more effectively, therefore reducing the burden on the CJS as well as the individual players.

Potential Limitations of Implementing Section 28

Researchers have highlighted potential limitations of the introduction of pre-trial cross-examination. First, the comfortable surroundings afforded by a Section 28 approach may inhibit the solemn nature of a trial which highlights to the young witness the serious nature of the proceedings (Hoyano, 2000). Second, some critics of Section 28 have voiced that video evidence may lack the "immediacy and persuasive impact" (Hoyano, 2000, p. 10) of the young person's live testimony, meaning the jury may struggle to connect to the evidence given via video (Hamlyn et al., 2004; Payne, 2009).

Some prosecutors have expressed concerns that video evidence distances the jury emotionally from the young witness (Davies & Hanna, 2013). In summary, although psychological and legal research can hint at the positives and negatives of Section 28, ultimately it is difficult to predict the consequences for practice until pre-trial cross-examination is implemented and evaluated.

Research Aims

This research aims to explore the perspectives of frontline professionals, specifically police officers and charity workers, regarding the inauguration of pre-trial cross-examination to guide future implementation. The targeted practitioners for the 2016 review of the pilot study (Baverstock, [MOJ], 2016) were the judiciary, police staff, CPS staff, defence advocates, court staff, intermediaries, witness care officers and witness service staff specific to three geographical locations in England. In a 2019 review, the judiciary and intermediaries were surveyed about their perspectives of Section 28 proceedings (Plotnikoff & Woolfson, 2019). Therefore, considering published research, the last time frontline police professionals were consulted about Section 28 was during the 2016 pilot review, with charitable agencies not having been previously consulted. Police Officers are key players in the trial process as they make the application for special measures (Fairclough, 2018) and the charitable sector can give a valuable contribution to research as they often work alongside young people and their families in a supportive capacity up to, during, and following trial. This research will extend the learning from the pilot study, bring it up to date with the contemporary contextual situation, and explore the perspectives of those on the front line of delivering this new service.

Method

Ethical Considerations

Full ethical approval for the research was granted by the Science, Technology, Engineering and Mathematics Ethical Review Committee at the University of Birmingham in March 2020. I received gatekeeper approval for this research by the lead Police Superintendent for the Section 28 roll out and the Board of Trustees for the charitable organisation in May 2020.

Participants

A total of thirteen participants took part in the research. Sample A consisted of seven police officers from the Child Abuse Investigation Unit (CAIU) at a UK police force who were the Officer in Case for young people due to attend court as witnesses. Sample B consisted of six charitable sector workers who are commissioned to support young people affected by crime through a criminal trial. To take part, participants had to have: (i) contact with young people who were witnesses of crime, (ii) a working knowledge of the proposed Section 28 pre-trial scheme, and (iii) gatekeeper approval from their organisation. Having had an experience of pre-trial cross-examination in practice was not considered an inclusion criteria for participation in the research but three of the participants volunteered that they had experienced this process through their professional contact with young witnesses. Table 2.1 provides an overview of the sample.

Table 2.1

Information about Police Officer and Charity Worker Participants

Pseudonym	Participant Group	Gender	Experience with Section 28	Interview type
Basil	Police Officer	Female	No	FaceTime

Pseudonym	Participant Group	Gender	Experience with Section 28	Interview type
Cedar	Police Officer	Female	No	FaceTime
Crimson	Police Officer	Male	No	FaceTime
Jade	Police Officer	Female	Yes	FaceTime
Azure	Police Officer	Female	No	Phone call
Ash	Police Officer	Female	No	FaceTime
Coral	Police Officer	Female	No	FaceTime
Cherry	Charity Worker	Female	No	Zoom
Lilac	Charity Worker	Female	Yes	Zoom
Amethyst	Charity Worker	Female	No	Zoom
Violet	Charity Worker	Female	Yes	Zoom
Pewter	Charity Worker	Male	No	Zoom
Rose	Charity Worker	Female	No	Zoom

Procedure

I approached police participants through an email cascade facilitated by the Superintendent taking the lead for Section 28, and approached charity worker participants through an email cascade. The emails sent out included a recruitment flyer (see Appendix Three) with brief information regarding the purpose and procedure of the study and the contact details for myself and my supervisor.

Potential participants were asked to contact me to express an interest in taking part in the study, upon which they were sent a copy of the participant information sheet (see Appendix Four) and consent form (see Appendix Five) to sign. Once a signed copy was received, an interview was arranged via the participant's preferred

method. Participants were reminded of their right to withdraw from the study prior to the interview taking place. Once the two-week period had passed, the right to withdraw ceased; none of the participants opted to withdraw. At the end of each interview, participants were debriefed and provided with a debrief sheet, including both my supervisor and my own contact details (see Appendix Six).

Data Collection

Smith and Eatough (2016) posit that semi-structured interviews work effectively for qualitative approaches as they allow the interviewer to follow up on interesting points that are raised during the interview, and direct specific lines of questioning. Producing an interview schedule (see Appendix Seven) allowed me to consider what information I aimed to elicit from participants, and identify any particular issues and sensitive topics which may arise during the interviews with participants prior to the research commencing. The semi-structured nature of the interview schedule allows the interviewer to be “guided by the interview rather than dictated by it” (Smith & Eatough, 2016, p. 56) which is conducive to establishing rapport, giving value to the participant’s account and eliciting rich detail. The questions in this research were open ended (e.g. “Can you explain to me how you feel pre-trial cross-examination will change the experiences of young people who are witnesses in criminal trials?”). According to Braun and Clarke (2014), “question wording and order are contextual and responsive to the participant’s developing account” (p. 78). The qualitative approach therefore negates the depersonalisation often encountered using empirical research methods such as laboratory studies.

Participants in this research completed a semi-structured interview, which took place via a remote method preferred by participants (i.e. FaceTime, Zoom or

phone call), due to the COVID-19 pandemic. I conducted all of the interviews myself as an experienced practitioner in supporting young people who have experienced victimisation. All interviews were recorded using a Dictaphone, and immediately uploaded to the University of Birmingham's secure data storage system. The audio recordings were permanently deleted from the Dictaphone at the point of upload to the secure data store and permanently deleted from the data store at the point of verbatim transcription.

Analysis

Thematic analysis was used to analyse the interview data; it is “a method for identifying, analysing and reporting patterns (themes) within data” (Braun & Clarke, 2006, p. 79), and a flexible approach that is well suited to applied research. Thematic analysis allows for both contextual and individual experience to be interpreted, which was important as professional participants were likely to express both professional and personal viewpoints. Thematic analysis is also useful for comparison across groups; exploring themes both within and across each of the two samples.

Following Braun and Clarke (2013), I conducted the analysis in five stages: reading and familiarisation, coding across the dataset, searching for themes, reviewing themes, and defining and naming themes. Table 2.2 outlines the stages of analysis (taken from Braun & Clarke, 2013).

Table 2.2

Stages of Thematic Analysis (from Braun & Clarke, 2013)

<i>Stage</i>	<i>Phase of analysis</i>
<i>Stage 1</i>	<i>Reading and Familiarisation</i>
<i>Stage 2</i>	<i>Coding Across the Dataset</i>

<i>Stage</i>	<i>Phase of analysis</i>
<i>Stage 3</i>	<i>Searching for Themes</i>
<i>Stage 4</i>	<i>Reviewing Themes</i>
<i>Stage 5</i>	<i>Defining and Naming Themes</i>

Familiarisation relates to immersion in the dataset, which started at transcription. The interviews were transcribed verbatim, checked to ensure accuracy, and the transcripts were read multiple times, noting initial thoughts and reflections. Next, the initial coding phase was driven by an inductive “bottom up” approach. Semantic coding summarised the content of the corpus (i.e., explicit surface meaning) whilst latent coding looked underneath the surface for deeper interpretive meaning (Terry et al., 2017). The coding was an iterative process conducted line by line. Following this, commonalities and themes were identified in the dataset.

The reviewing phase involved rechecking each code and theme to the original transcripts to ensure they were representative and data-driven. The themes both within and between the participants’ accounts were reviewed and the themes were continuously reviewed throughout the analytic process. The identified themes were defined and a hierarchical structure formulated. Extracting the most salient data from the transcripts allowed me to start creating the narrative around each theme, and a process of checking credibility. Themes were discussed within supervision sessions with my supervisor, and revisions made, where necessary.

Epistemological Position

When using thematic analysis, the epistemological viewpoint of the researcher should be made explicitly clear from the outset of the research. The researcher needs

to be clear about the lens they will be analysing their data through, due to the flexible nature of the thematic analysis approach. Braun and Clarke (2016) believe that stating these intentions early on will allow the researcher to understand how the theoretical assumptions inform the subsequent analysis.

The aim of this research was to gather understandings and perspectives from participants and, as such, is grounded in a critical realism/contextualism epistemological orientation. This acknowledges both the presence of a ‘truth’ and the acceptance that this ‘truth’ can exist in multiple realities which are constructed by the individual participant’s experiences and beliefs. The words and language provided by the participants will allow access to this reality; however, there is an element of shared experience between the participants in that, in some contexts, the knowledge is valid (e.g. the shared reality of the criminal justice system). This position was important for this research as the authors were invested in exploring the participants’ perspectives within such a socially constructed framework.

Results

Three superordinate themes were identified, namely (i) court as a distressing experience for young people, (ii) need for careful application, and (iii) impact of Section 28 on defendants. Each superordinate theme includes a number of subthemes (see Table 2.3). Next, the themes are presented and supported by relevant quotes.

Table 2.3

Superordinate and Subordinate Themes

Superordinate Themes	Subordinate Themes
Theme One	Uncertainty
	Disempowerment

Court as a Distressing Experience for Young People	Expectation vs. Reality
Theme Two	Potential to Reduce Distress
Need for Careful Application	Critical Reflections on Application
Theme Three	Unfair advantages
The Impact of Section 28 on Defendants	Future considerations

Theme One: Court as a Distressing Experience for Young People

Distress experienced by young witnesses was a common premise throughout the interviews, with professionals providing an insight into how the process of appearing as a witness in a trial impacts on young people.

Subtheme One: Uncertainty

Participants identified uncertainty as a common experience for young witnesses throughout the journey from disclosure to trial: *“I think the anxieties stem from the unknown and not knowing whether someone is going to be... charged or not... or found guilty for example. That is the unknown, which causes so much anxieties about it.”* (Amethyst – Charity Worker). In addition to general uncertainty, the participants also identified other contributing factors. These were lack of clear communication, last minute changes, delays, and the possibility of seeing the defendant. Investigations can take months or even years to reach the point of trial, and participants described how timescales are getting increasingly longer, with some young people waiting for upwards of two years for the trial. This delay in giving evidence was considered to intensify the uncertainty for young people:.

They [young witnesses] are extremely traumatised by the time they get to the police, then to go through a year investigation, and for it to then be another year to get to court, it's really drawn out for them. And so, when that trial date comes around, that trial week or whatever, they are really, really on edge and stressed and anxious. (Cedar – Police Officer)

The possibility that the young witness might see the defendant was named as a significant concern and was highlighted as one of the most unsettling elements of the experience: *“They are often terrified about the fact that they are in the same building as the perpetrator. Even with special measures, with special car parks, different entrances. They are still petrified of seeing them.”* (Basil - Police Officer). The participants felt that a lack of clear communication from professionals further created a sense of uncertainty, especially when combined with last minute changes, as child witnesses are unable to anticipate what is going to happen. This means that child witnesses are often left in limbo and feeling distressed which is exacerbated when the situation changes without warning: *“The biggest thing is always not knowing what is going on, particularly when they expect something to happen at a certain time and then it doesn't”*. (Basil – Police Officer). The participants felt that uncertainty led to child witnesses feeling let down and distrustful of the process. Cherry highlighted that anxiety created by the uncertainty in the trial process had resulted in such distress for some young witnesses that they disclosed a desire to not show up to their court appearance: *“There are some young people have [said] like, well, I'm not going to turn up”*. (Cherry – Charity Worker).

Subtheme Two: Disempowerment

Courthouses are daunting, authoritarian environments for young witnesses, employing a deliberate and symbolic design (Mulcahy, 2011) . They were described by participants as unknown and unfamiliar, with reference to both the environment and professional adults (such as legal representatives, judiciary, ushers etc) present. This was further reinforced by the fact that courts are not environments young witnesses would come across on a daily basis: *“Courts are deliberately intimidating. You know they tend to be big, dark rooms with lots of lots of dark wood, people sitting up high, and I think that is even more intimidating for children and young people.”* (Basil – Police Officer). The participants further described how young witnesses are at the mercy of adults in the courtroom. Participants felt that courtroom professionals appear busy, scary and important and it was noted that often child witnesses were expected to interact with adults they had probably never met before, and whom the child perceived to be unfamiliar and powerful: *“[Young witnesses are] at the whim of adults. Even though there are adults in the court system who are trying to help them, they are at their mercy.”* (Basil – Police Officer).

Participants acknowledged that being cross examined was a difficult process whomever you are. The discomfort of giving evidence, about a potentially highly personal, sensitive matter, was highlighted as a gruelling process for all victims of crime, but participants felt that children would be especially affected by the highly intrusive questions which would be posed: *“It’s daunting for an adult, but for a young witness it is horrendous, a horrendous experience.”* (Ash – Police Officer). The discomfort associated with giving evidence in relation to a very personal and sensitive experience in a public venue, alongside the authoritarian nature of the court environment, was considered to add to the overall distress of young witnesses. At

times, this led to young people experiencing an overwhelming sense of emotion: *“We had one girl trying to run out at court, because she said she didn’t want to be cross examined.”* (Ash – Police Officer); *“She felt that they just weren’t believing her. And she got very, very angry and very upset.”* (Pewter – Charity Worker).

Subtheme Three: Expectations Vs. Reality

The uncertainty and disempowerment experienced by young witnesses appears to be determined by the fact that young people have a different expectation to their actual experience. Several participants stated that sensationalised television programmes were the young person’s only reference to what the experience of giving evidence may be like: *“I think a lot of people see things on the television, don’t they, which is not exactly quite how it is in reality so they have got very different expectations.”* (Rose – Charity Worker); *“With everything they see on the TV... we can tell them until we are blue in the face that it doesn’t happen in that manner, but they are always going to go back to what they have seen.”* (Coral – Police Officer).

One of the aspects of the disparity between expectation and reality relates to the young witnesses’ anticipation that they will be believed and getting a sense of justice. However, the purpose of cross-examination is also for the court to attend to another side of the story, which can be a difficult concept for young people to grasp. Participants expressed that this disparity between expectation and experience means that young witnesses can feel a sense of being excluded and placed on the periphery. Participants highlighted that the young person’s sense of justice is crucial, and by excluding the young person from the process, young witnesses may feel that the important facets of the case have been decided for them: *“They don’t understand “well I’ve told them my story, surely they should believe me”* (Amethyst – Charity

Worker). This can leave young people feeling that they are not being listened to and deprived of their chance to participate in the judicial process: “*Some [young] people might like to have that public display of them being able to tell their story and to get some form of justice.*” (Rose – Charity Worker). This is likely to result in the young person believing that the trial lacks meaning and is potentially damaging for their overall sense of justice.

Theme Two: Need for Careful Application

The participants believed that Section 28 will reduce distress of the young person by creating ‘distance’ between them and the trial process. However, they also questioned how the new process would be translated in the young person’s experience. The participants expressed that unconditional application of Section 28 would actually serve to intensify the distress felt by some young people, for example, by applying Section 28 as an unconditional approach for all witnesses under the age of eighteen instead of inviting young people to make an informed choice about which measures, if any, they would prefer to use. This could also have potentially negative consequences for other non-professional players in the trial, such as jurors.

Subtheme One: Potential to Reduce Distress

Participants felt that the Section 28 experience would be less stressful overall for young people as a result of both the physical and emotional distance that is created between them and the trial process. During Section 28 hearings, the young person is not required to attend the live court hearing, appearing a few weeks prior instead, which the participants believed would mitigate the identified stressors in Theme One. A reduction in uncertainty was seen as a consequence of creating distance between the young witness and the trial and thus, the anxiety of the young person is likely to be

lessened: *“I think it all links back to that uncertainty, there are things we can help the young people have some control over... you are instantly going to relieve some of those anxieties I think.”* (Violet – Charity Worker). Fewer delays, a reduction in the number of people physically present in the courtroom, including the defendant, and the physical distance between the young witness and the courtroom were identified as benefits of Section 28 hearings. With pre-trial cross-examination, the young witness is given a specific time to attend court to give evidence. The expectation is that this will make the experience less stressful and elicit the best possible evidence from young people: *“For me, that is the biggest thing is that they will know what is going to happen and when... I think that will cause better evidence.”* (Basil – Police Officer).

That’s got to be a massive bonus with Section 28 because you are going to have a pre-set time where you are going to have your cross-examination recorded. It may vary within an hour or so. I can’t see the young witness hanging around for days on end, or hours on end, anticipating what’s going to come. (Ash – Police Officer)

Trials require a significant number of players, including both the defendant and professional adults. Participants noted that young witnesses were consciously aware of who is in the courtroom. By holding the Section 28 hearing on another day, prior to the trial, it should prevent the possibility of the witness seeing the defendant, and therefore reduce their anxiety regarding this: *“They wouldn’t have to panic about going to that building, facing the idea of seeing the suspect.”* (Crimson – Police Officer). In addition, participants described how the authority court staff hold can be just as intimidating as seeing the defendant for a young witness. As a result, they felt

that the fewer people present in the court, the less distressing an experience it would be for young witnesses:

It would just be the judge and the two barristers and that would be it. There wouldn't be anybody else there, so if it is explained to the young person that that is what's going to happen, I would imagine that it would be a lot less stressful for the young person." (Pewter – Charity Worker).

Participants further suggested that pre-trial cross-examination could potentially take place in an entirely different location to the court building: "*They might have like a live link centre or a way of being recorded away from the court centre.*" (Crimson – Police Officer), thereby further reducing young witnesses' anticipated anxieties. This would allow them to focus on the questions posed during testimony. There was a general sense that this would benefit recall and ultimately lead to better evidence: "*That's the whole point of it isn't it? To give their best evidence.*" (Azure – Police Officer).

Subtheme Two: Critical Reflections on Application

Individual needs and the right of the young person to choose which special measure they wish to use was a common theme throughout the interviews with the charity workers: "*I think I would have liked still, young people as victims, to have the option and to be empowered to make that decision, rather than just be told you are going to do Section 28.*" (Lilac – Charity Worker). The charity workers felt that Section 28 might not necessarily suit all young people. The individual needs of the young witness are often overlooked and, in their experience, a one size fits all approach is adopted, particularly the tendency for adults to make decisions on behalf of young witnesses, removing freedom of choice. Current practice requires that child witnesses

should be given a comprehensive explanation of the special measures to enable them to make an informed choice. It is presumed that the child will give their evidence in chief by recorded interview and further evidence via live link unless the child opts out (Code for Crown Prosecutors, 2021). The charity workers expressed that, in their experiences, the opt out process was occasionally not explained fully leading the young people to feel they had no choice or hadn't been listened to. Failure to consider individual needs, and the unconditional application of pre-trial cross-examination for all young people could potentially disempower them further by removing young witnesses' decision-making ability and sense of justice.

We do come across young people where we might instantly say, this would be a great idea for them...you have a frank conversation with them and you realise that the opposite is true and they might want to have that experience on the day. (Violet – Charity Worker)

This may result in them feeling excluded and on the periphery of the subsequent trial process: *“Some young people might want to have their day in court, and they might want to have a jury there and they might want to be listened to.”* (Rose – Charity Worker). Charity workers concluded that every young person is different, and that pre-trial cross-examination should therefore be viewed as an add-on to the existing measures, as opposed to an unconditional decision made on the basis of age.

Although pre-trial cross-examination was seen as a welcome change to the current trial process, police officers reflected on the distance created by such proceedings possibly diminishing the seriousness, and therefore the salience, of the trial for young witnesses. As such, police officers questioned whether young witnesses would recognise that they are taking part in a trial: *“If you remove everything from*

that trial situation, would a child or young person recognise how serious it is.” (Basil – Police Officer). Additionally, police officers also noted that removing the presence of a child witness from the trial process could create consequences for non-professional players, including jurors and the public: *“They still have to have certain things put in place for them to understand process, to understand evidence.”* (Cedar – Police Officer). The trial process has been in existence for years and police officers felt that a divergence away from the expected process may mean that the relevance and salience of the trial process, and therefore justice, is lost to such key players.

Theme Three: The Impact of Section 28 on Defendants

A line of questioning regarding the impact of pre-trial cross-examination on defendants was only included in the interview schedule for participants who were police officers due to charity workers not having professional contact with defendants as part of their role.

Subtheme One: Unfair Advantages

Police officers suggested that defendants may see Section 28 hearings as an unfair advantage for young witnesses by their being afforded the opportunity to give evidence in preferential circumstances: *“They’ve still got to appear in the court building, they’ve still got to answer the prosecution in front of all those people.”* (Cedar - Police Officer).

There may be a concern for them that the questioning isn’t particularly how they would have wanted it or they may feel that there is an unfair advantage for the person because they are not having to go through the same thing that the other witnesses are. They may feel that that is a slight unfair advantage. (Coral - Police Officer)

The police participants did identify some advantages of the pre-trial cross-examination process for the defendants. The certainty of the Section 28 hearing happening when it is meant to happen was seen as a positive for defendants as it is important to also manage defendants' expectations. The police participants identified further advantages for defendants; the aim of pre-trial cross-examination is to elicit better quality evidence which may lead to reasonable doubt and a possible acquittal: *"It could mean it causes that reasonable doubt...that leads to an acquittal. And I think better quality evidence is better for everyone because it helps us get at the truth."* (Basil – Police Officer). Alternatively, Section 28 may encourage earlier guilty pleas, resulting in a reduction in sentence: *"If they go guilty, it's a benefit to the defendant because the courts will take that into consideration, they might get slightly reduced sentence, so in some senses it is a win-win situation."* (Crimson – Police Officer).

Subtheme Two: Future Considerations

Police officers were asked if they felt that vulnerable defendants should also be afforded the opportunity to be cross examined via Section 28. Generally, participants felt that this would only be fair. However, they emphasised that this should merely be offered in cases where vulnerability had been established:

Why wouldn't they be covered under the same umbrella and given the same opportunity because surely, as much as we want to make sure the victim can give their best evidence, surely we need that from the defendant as well in order to get as close to the truth as possible. (Jade - Police Officer)

The main counter-argument to vulnerable defendants being offered Section 28 hearings was that the CJS is based upon the principle that the person being accused of the crime will appear in court to face the accusations, and that removing that may

impact on how open and transparent the trial will be: *“There is evidence to suggest this person, who is the defendant, has done something which is really bad and this is their time to answer that.”* (Cedar - Police Officer).

Please note that as of March 2021, vulnerable defendants have access to an intermediary at the discretion of the judge. Those defendants who are neurodiverse are highlighted as a particular vulnerable group. This change was brought about following the completion of this research.

Discussion

This study identifies three key themes regarding the introduction of Section 28 pre-trial cross-examination: court as a distressing experience for young people, need for careful application, and the impact of Section 28 on defendants. Each theme contains a number of subthemes. The main themes will now be discussed in relation to psychological literature.

Theme One: Court as a distressing experience for young people

Currently appearing as a witness in a criminal trial is not an optional process in England and Wales; young people are summoned to appear due to the preference for oral evidence (Roberts, 2010). The first theme relates to the distress caused by appearing as a witness and it was observed throughout all thirteen of the interviews. There was an overall agreement that appearing in court is a difficult experience for young witnesses, more so than for adults, and is likely to result in distress due to experiencing uncertainty and disempowerment through the process. This is reflected in the literature; as argued by Robinson (2015), appearing in court is a stressful experience for anyone, especially young people. Finklehor and Browne (1985) argue that stigmatisation of the young person (shame) is one of the dynamic factors which leads to

trauma in child sexual abuse victims. The intimidation of the court environment, the shame of disclosing personal information, and distress at seeing defendants are described as the biggest barriers for witnesses (Cooper, 2005).

The participants in this research felt that the court environment is deliberately formal and intimidating. For a young person, who has potentially already experienced a traumatising situation, such an authoritarian environment can disempower them further as the control in the situation is removed and placed in the hands of those in power (i.e., professional adults). The participants in this research described both the attributes of the physical environment and the professional players in the system as authoritarian and overwhelming for young witnesses. Young witnesses, by virtue of their age, are entitled to special measures to make the experience of giving evidence less intimidating. The participants in the current research felt that, despite the application of such special measures, courtroom environments were still inappropriate places for young people to be. Powerlessness is one of four trauma causing factors (Finklehor & Browne, 1985); it is possible to hypothesise therefore that courtroom environments enhance the powerlessness felt by young witnesses due to the inherent control adults hold over the young people in trial processes.

Young witnesses have preconceived notions of what their court experience is going to be like, shaped by sensationalist presentations in the media. The participants in this research felt that often young witnesses enter the courtroom with particular expectations including anticipating that their story will be believed and that they will be listened to; often the expectation does not match the reality of their experience. Not only does this increase young witnesses' feelings of disempowerment (Finklehor & Browne,

1985), it also has the potential to impact on their sense of justice, of the gravity of the trial process, and their sense-making of being a witness in a criminal trial.

Theme Two: Need for Careful Application

Theme Two highlighted that participants felt the creation of “distance” between the young witness and the court process would be successful in reducing the uncertainty of the experience and therefore aiding the young witness to give their best evidence.

Hoyano (2000) states that one of the biggest advantages of Section 28 is the reduction in likelihood of seeing the defendant; Davies and Hanna (2013) agree that pre-trial cross-examination is going to reduce the stress experienced by young witnesses through the trial process.

Young people are often assumed by the lay public to be unreliable witnesses due to the expectation they will have poorer memory recall than adults (Westcott & Page, 2002). Better memory recall was cited by the participants in this research as an advantage of Section 28 due to the decrease in delays getting to trial and a reduction in the distress caused by uncertainty and disempowerment of the trial process. Participants felt that better memory recall from earlier hearings was more likely to produce best evidence and was therefore advantageous for the administration of justice. The literature supports this notion concluding that longer delays can significantly impact memory detrimentally for young people (Martin & Thomson, 1994; O’Neil & Zajac, 2013; Spencer, 1992; Zajac & Hayne, 2003) therefore impacting on the quantity of accurate recall. The shortening of the time period between disclosure and trial offered by Section 28 could lead to more complete recall for young witnesses, and may result in fewer errors from leading questions compared to longer delays.

Despite the identification of distance being a positive consequence of pre-trial cross-examination, the participants in both groups expressed that too much distance could be detrimental. The YJCEA (1999) suggests that the witness's wishes (s.21 [4b]) regarding giving evidence via special measures should be considered when making the application. The charity workers anticipated that well-meaning professionals could potentially apply an unconditional directive of Section 28 hearings in all trials with young witnesses without considering their individual needs or wishes. Young people have a developed sense of what justice should look like and removing them from this process can lead to further disempowerment. Several of the police participants also suggested that removal of the young person from the “seriousness” of the court process could impact on the young person’s ability to give evidence and the quality of the evidence given. The concerns about distance and loss of salience is echoed in the literature as researchers warn that Section 28 hearings could diminish the gravity of the trial for the young witness (Hoyano, 2000) and for the other, non-professional, participants such as jurors (Davies & Hanna, 2013; Hamlyn et al., 2004; Payne, 2009). Further research could examine this concern through interviews with young people and lay participants regarding their perceptions of the experiences of Section 28 hearings.

Theme Three: The Impact of Section 28 on Defendants

The police participants were asked about their perspectives on both the impact of Section 28 hearings on defendants and whether vulnerable defendants should be afforded the same access to pre-trial cross-examination methodology as vulnerable witnesses. The police recognised overwhelmingly that defendants may view Section 28 as an unfair advantage for the prosecution. Despite this, some of the participants identified that Section 28 also holds some advantages for defendants in respect of

getting to the “truth”, including better evidence from all individuals giving evidence, which may result in the introduction of doubt in the young witnesses’ story, and also a potential increase in early guilty pleas which can result in a reduction in sentence (Davies & Hanna, 2013; Hoyano, 2000).

When asked if vulnerable defendants should also be afforded Section 28 hearings, generally the police officers felt this would be appropriate in the right circumstances. However, they felt that the parameters for this would need to be appropriately defined (e.g. age, diagnosed mental health condition, identified learning difficulties) with clear guidance about operationalisation. There is limited research regarding the use of special measures with vulnerable defendants. However, interviews conducted with frontline professionals (Fairclough, 2017) revealed limited use of special measures (such as live link) with vulnerable defendants due to concerns about pre-recorded evidence not being practical because they testify following the prosecution’s case and in response to evidence elicited from prosecution witnesses. As noted in the results section, since this research has been completed, vulnerable defendants have been permitted to have support from intermediaries (particularly those from neurodiverse groups). The question of the appropriateness for Section 28 hearings for vulnerable defendants would benefit from further applied research.

Limitations

The nature of this qualitative research is that it provides a snapshot of current practice within two professional disciplines, in a particular location, at a certain point in time. The perspectives of the professionals interviewed for this research may be subject to change as the Section 28 scheme is rolled out and they gain further first-hand experience of the scheme. The number of participants in this research who had practical

experience of Section 28 hearings was three; consequently, the data contained a mixture of lived experience and expectation which may have prevented definite conclusions regarding professional's perspectives on Section 28.

This study included professionals from two groups (police officers working in CAIU's and charity workers) in a particular locale; it is therefore not possible to suggest the findings from this research would reflect the perspectives of other professionals within the court arena from different disciplines such as judiciary, prosecution, defence, and witness service operatives in other areas of England and Wales.

Implications for practice

A key finding of this research is the expectation of professionals that Section 28 will reduce distress experienced by young witnesses by creating both emotional and physical distance between them and the identified stressors of the trial process. Pre-trial cross-examination processes should reduce uncertainty by giving a precise time for the hearing, reducing the delays involved in the trial process and reducing the disempowerment experienced by young witnesses. Practitioners who are supporting young people through Section 28 hearings can facilitate this by ensuring communication and preparation is clear and consistent.

A further main finding is the principle that well-meaning adults should not apply a "one size fits all" approach when considering applications for special measures. An emergent literature base focuses on transforming criminal justice settings, such as courtrooms, into trauma-informed environments through the provision of "trauma-informed policies, practices, and environment" (Knoche et al., 2018) and this could also inform future practice. Guidance published in the United States by the Substance Abuse and Mental Health Services Administration (2014) states that organisational ability to

realise, recognise, respond and resist traumatisation all contribute to the formation of a trauma-informed environment. It would appear sensible, given that young witnesses are likely to have been subjected to adverse traumatising experiences, to apply trauma-informed thinking to the courtroom milieu. A key finding of this research indicates that the informed choice of young witnesses should be a fundamental part of the trial process and professionals should avoid an unconditional application of Section 28 proceedings based on age alone. Empowerment, voice, and choice are identified as important factors of trauma-informed care (SAMHSA, 2014). Practitioners working in this field should consider current guidelines on age factors including Gillick Competence guidelines (1986) and the Young Witness Protocol (2018) which suggest that families should be involved in decision making involving younger children and those with identified additional needs (such as learning difficulties) in healthcare settings. Such principles are also applicable as guides to best practice for criminal justice settings such as criminal trials.

The loss of seriousness or salience of the trial has been raised throughout the literature in the past 30 years as a concern about the implementation of Section 28 (Davies & Hanna, 2013; Hamlyn et al., 2004; Hoyano, 2000; Payne, 2009) although, to date, there has been no empirical research published on this topic. If it is found that Section 28 results in salience being lost, judicial instruction to non-professional players (such as jurors) regarding Section 28 methodology, outlining both the benefits and limitations, should be introduced in trials where young witnesses are present to negate the loss of salience for such non-professional members of the court.

Previous research has highlighted potential financial and legal benefits to the Section 28 scheme including the withdrawal or downgrading of charges at an earlier

point and the defendant being advised to enter early guilty pleas by their defence advocate; therefore, avoiding a stigmatising legal process (Hoyano, 2000). This proposition has been supported by the participants in this research and lends support for rolling out the scheme sooner rather than later. Several participants in this study highlighted that they believed, due to their experiences of supporting child witnesses, that the introduction of Section 28 will reduce delays overall and will encourage more early guilty pleas from defendants.

Future Research

As stated under ‘limitations’: this research provides a snapshot of current practice and the perspectives of the professionals interviewed for this research, which may be subject to change as Section 28 hearings are rolled out and they gain further first-hand experience of the scheme. Moreover, the study included professionals from two groups (police officers working in CAIU’s and charity workers) in a particular locale; it is therefore not possible to suggest the findings from this research would reflect the perspectives of other professionals within the court arena from different disciplines, such as: judiciary, prosecution, defence, and witness service operatives in other areas of England and Wales. Therefore, future studies could examine perceptions and experiences from different disciplines from the court arena. Moreover, consideration of the impact of Section 28 hearings on defendants may naturally come from interviewing professionals who have a wider remit within the courtroom process. Additional research exploring the possibility of Section 28 procedures for vulnerable defendants would serve to promote best practice and the gathering of best evidence. Finally, there is currently a small amount of research focusing on the impact of trauma memories during cross-examination and other adversarial questioning situations. Future

research into the introduction of Section 28 hearings could explore the differences and similarities between the impact of trauma and non-trauma memories on accurate recall in cross-examination situations.

Conclusion

Every young person is different and holds their own expectation about what justice should look like. This research has indicated that, in the main, professionals from the police and charitable sectors are positive about the introduction of pre-trial cross-examination but have some reservations regarding unconditional use. The process of cross-examination is a distressing experience for young people and it is therefore crucial, to avoid further distress, that young witnesses be consulted throughout the trial experience.

CHAPTER FOUR

Psychometric Critique: Bonn Test of Statement Suggestibility

Abstract

So far this thesis has explored how the emotional presentation of child witnesses can impact on subsequent adult juror credibility ratings and the perspectives of professionals regarding the introduction of Section 28 as an alternative method for child witnesses to give their testimony. An additional concern, as outlined in Chapter One, is child witness susceptibility to suggestion, that is, the impact of suggestive questioning on subsequent behaviour (e.g. acquiescence to suggestion). The BTSS (Endres, 1997; Endres et al., 1998) is a psychometric measure of interrogative suggestibility which focuses on the individual aspects of the child (such as developmental, cognitive, and psychosocial factors) rather than the impact of the environmental conditions during testimony. The aim of this chapter is to examine the psychometric properties of the BTSS tool by critiquing the scientific construction of the elements and the overall robustness of the measure. The chapter concludes that the limited available research allows for a tentative conclusion of suitable levels of reliability and validity. However, the suggestion is made that the BTSS should not be administered in isolation, there should be a wider assessment completed with consideration of the broader aspects of the child's individual situation, this provides crucial contextual information to the assessment reader. This is considered particularly important given that the likely audience for such assessments are unlikely to have backgrounds in psychological knowledge (e.g. judiciary, legal counsel, jurors). Consideration is given to the appropriateness of applying the test to forensic settings and the potential to extend

current knowledge regarding the role of individual differences in the measurement of suggestibility of child witnesses.

Introduction

A principle component of the child witness credibility literature is the measurement of interrogative suggestibility. Gudjonsson and Clark (1986) define interrogative suggestibility as “the extent to which, within a closed social interaction, people come to accept messages communicated during formal questioning, as a result of which their subsequent behavioural response is affected” (p. 4). The goal of this work is to determine if there are individuals who are more likely to give inaccurate accounts (trait suggestibility) under perceived external pressure and to explore the mechanisms underlying this process (e.g., cognitive factors, Milne & Bull, 2003). Researchers have also been particularly interested in the interaction between trait suggestibility, that is the concept that “some people are inherently more suggestible than others” (Ridley, 2013, p. 2) and the environment the interview is conducted in (social influences, Vrij & Bush, 2000).

It is crucial for the wellbeing of child witnesses and the fair administration of justice, to ensure that testimony is not impacted by error, deception or contamination. One method psychologists use to measure the possible suggestibility of the child is through psychometric measures; objective and quantifiable tests which are grounded in statistical analysis. One such measure is the Bonn Test of Statement Suggestibility (BTSS, Endres, 1997; Endres et al., 1998) which was created to measure individual differences in suggestibility of children aged 4 to 10 years old. This scale was developed in response to criticism that most suggestibility scales designed for adults

(such as the Gudjonsson Suggestibility Scale, GSS, Gudjonsson, 1997) are too complex for young children.

Overview

The Background of Interrogative Suggestibility

Historically, the suggestibility literature is broadly split into two approaches; the experimental approach (Schooler & Loftus, 1986) and the individual differences approach (Gudjonsson & Clarke, 1986). The experimental approach posits that suggestibility results from the environmental conditions in which witness testimony is extracted, for example, the delay between the event and the moment of recall (Schooler & Loftus, 1986). However, this approach has been criticised for not considering individual differences, which may also contribute to the suggestibility of the witness. Candel et al. (2000), for example, state that research has consistently shown individual differences in levels of suggestibility between children placed in similar stressful situational contexts (e.g. forensic interview or trial).

The individual differences approach focuses on the differences between witnesses and the impact of these on suggestibility. Considering forensic practice in criminal courts, Gudjonsson and Clarke (1986) created a model of interrogative suggestibility which posits that this concept is a product of the person, the environment, and others within that environment. The three essential prerequisites to suggestibility within this model are uncertainty (not being sure of the answer to the question), interpersonal trust (belief the interviewer is genuine and not deceptive) and expectation (a reluctance to admit they are not sure or incorrect due to a perception that the witness is expected to know the right answer) (Gudjonsson, 1997). The interrogative suggestibility model puts forward two main types of suggestibility which can be

influenced by individual factors: ‘Yield’ and ‘Shift’. Yield relates to the likelihood of the witness acquiescing to the interviewer’s leading questions and Shift relates to the measurement of reactions to interrogative pressure techniques (such as those seen in forensic interview and cross-examination, like repeated questioning). These two concepts are the basis for the interrogative suggestibility research conducted by Gudjonsson and Clarke (1986); the theory was subsequently developed into a scale for adult witnesses (the GSS) as a way of measuring suggestibility in interview and trial situations.

The Application of the BTSS in England and Wales

The GSS tends to be used in England and Wales at the point of appeal for defence teams to support the vulnerability of defendants. The BTSS, however, is a tool primarily used with prosecution witnesses who are suspected to have been exposed to leading questions and interrogative pressure. For that end, the BTSS tends to be used in countries which employ inquisitorial methods where a court-appointed professional makes judgements regarding credibility of witnesses and the admissibility of evidence. In England and Wales, an adversarial system, the prosecution’s case rests upon the credibility of the witness’s evidence. Therefore, entering such psychometric evidence could have the unintended consequence of undermining the credibility of the witness because (as per the “unused evidential materials” rule) any such evidence must be disclosed to the defence. Moreover, the use of the BTSS could lead to challenges regarding the trespass on the role of the jury to make credibility judgements. Therefore, these issues should be considered when assessing the possible application of the BTSS in an adversarial system such as England and Wales.

Development of the BTSS

The BTSS adopts the interrogative suggestibility approach, applying the same principles of Yield and Shift to the child witness population. Endres (1997) states the main need for the instrument was because methodological weaknesses had been identified in other suggestibility scales. As mentioned above, it was not deemed appropriate to use adult scales (e.g. the GSS) with children. Other tests attempting to measure suggestibility in children have been criticised for appearing to show reliability and validity limitations. For example, the Test of Statement Suggestibility (Burger, 1971) lacks criterion validity due to absence of significant correlation with other similar tests and the Würzburg Suggestibility Test (WST, Bottenberg & Wehner, 1971) is designed as a group task meaning it does not replicate the forensic interview in real life. As such, Endres (1997) and Endres et al. (1998) identified that there was a gap in the suggestibility field for a valid and reliable test for children. They created the BTSS and the preliminary results of a pilot study into the BTSS indicates the robustness of the scale. Endres (1997) sampled 62 children aged between 4 and 10 years old, and found satisfactory internal consistency and high intercorrelations between the three subscales of Yield, Shift, and Total Suggestibility on the BTSS.

Salient factors in the research have been combined to propose three determinants of suggestibility for child witness testimony (Endres, 1997) namely: cognitive (the ability of the witness), motivational (the possible impetus for the individual to give testimony), and social (the administration of the interview). These are a redesign of Gudjonsson and Clarke's (1986) uncertainty, interpersonal trust, and expectation. Endres (1997) argues all three domains are susceptible to error including mistakes in encoding and retrieval (cognitive), confabulation (motivational), and distortion (social). The critical question therefore, is not whether children are susceptible, but rather to

what extent a child with specific individual factors is more susceptible to interrogative suggestibility compared to their peers. The aim of the BTSS is to provide an instrument which can help to measure this.

Administration of the BTSS

The BTSS is a test designed specifically for young children. The test is designed to be completed within a single administration, but the provision of two separate stories allows for repeated administration as required. The BTSS replicates the conditions of a forensic interview as it relies on verbal administration of the questions, rather than written. The BTSS utilises two different stories, one with a female protagonist whose toy duck gets broken by her friend and one with a male who is injured whilst roller skating. Each story is approximately 330 words and, during initial testing, the administrator makes the decision which story to administer for testing with the other story retained for potential repeated testing as required. The instrument should be administered in quiet conditions, free of distractions. The BTSS requires a four-phase administration between the interviewer (adult) and interviewee (child aged 4 to 10 years old) taking 30 minutes to complete. Phase one presents the story both verbally (at a speed suitable for the child) and in colour pictorial form. During phase two the interviewer requests that the child freely recalls the story, and phase three is a 15 minute distraction period. The final phase involves the administration of 31 questions to the child which are based on four different suggestive types; Distractor questions (control questions presented in a leading manner), yes-no questions (worded to be misleading), alternative questions (offering two incorrect answers presented in a forced choice manner), and repeated questions (projecting that the interviewer was not happy with the previous answer and expects a different response). The free recall section of the test

allows the administrator to ascertain if there are any features of the story the child is unable to recall for any reason. The distraction section of the test is designed to weaken the participant's memory trace and allow for suggestive influence. The answers given by the child are then used to indicate their position on Yield, Shift and Total suggestibility scales.

Yield Scale

The Yield scale (18 items) measures the child's acquiescence to incorrect information given by the adult and comprises of the yes-no (10 items) and alternative (8 items) question types.

Shift Scale

The Shift scale (8 items) measures whether the child changes their answers in response to negative feedback from the interviewer (social dominance) and relates to the repeated question type.

Total Suggestibility

This scale is the sum of the Yield and Shift scales (26 items) and indicates the extent to which the child is suggestible. It does not include the additional 5 distractor questions which total the 31 questions in the BTSS.

Characteristics of the BTSS

Level of Measurement

The level of data gathered by the BTSS is ordinal. The participants are marked on whether they have been influenced by each question or not (binary choice). The two subscales (Yield and Shift) and the Total Suggestibility scale indicate whether the child had acquiesced to the adult's suggestive questioning however, because the scales are derived from whether the child was influenced by the suggestible question or not (a

binary choice), it is not possible to ascertain a measurable distance between the ranks. Such categorical ways of measuring a construct are problematic from the perspective that they do not provide exact measurements. Thus, it can be argued that one child appears more suggestible, but it is not possible to determine exactly how much more suggestible.

Psychometric Properties of the BTSS

The BTSS is applied when there is uncertainty over whether a statement obtained from a child has been influenced by the context or process by which the statement was gained. This is particularly relevant where the child appears as a witness; for example, in a forensic interview, criminal trial, or family court proceedings. As noted in Chapter One, suggestibility forms part of the overarching concept of credibility; often psychologists are asked to comment on the credibility of child witnesses in court as expert witnesses to non-psychological professions, such as the judiciary, prosecution, and defence. It is crucial therefore to understand the reliability and validity of the BTSS in order to communicate its applicability and limitations when reporting BTSS results to others.

Reliability

Internal Reliability

Internal reliability indicates whether items within the same instrument are measuring the same construct within the psychometric measure (Kline, 1998). The statistic often used to measure this is the Cronbach Alpha Coefficient (Cronbach, 1951). Psychology is, at best, able to measure behaviour with a margin of standard error and the acceptable Cronbach Alpha Coefficient is generally recognised to be above 0.7 (Kline, 1998). The initial published reliability findings for the BTSS demonstrate that

the three question types (yes/no, repeated and alternative) and Total Suggestibility scales had acceptable ratings for internal reliability indicating consistency throughout the measure (yes-no, Cronbach's alpha = .74; alternative, Cronbach's alpha = .77; repetition, Cronbach's alpha = .70; total suggestibility, Cronbach's alpha = .85).

Candel et al. (2000) replicated these findings in a subsequent examination of internal reliability of the Dutch version of the BTSS with a sample of forty eight primary school children. In this study, the yes-no and alternative questions were combined into the Yield scale (Cronbach's alpha = .78) and the repetition questions into the Shift scale (Cronbach's alpha = .82). The Total Suggestibility scale in Candel et al.'s (2000) study was also within the acceptable range for internal reliability (Cronbach's alpha = .87). Given these results are limited to two studies, we can cautiously conclude that the questions on Yield scale are all measuring the same construct of suggestibility which is also true of both the Shift and Total Suggestibility scale; although further empirical research would be of benefit.

Test-Retest Reliability

The test-retest principle relates to a test's consistency over time. Kline (1998) states that an individual taking the same test twice at two different times should produce the same results when no intervention has taken place between the testing phases. During the initial testing of the BTSS, Endres (1997) and Endres et al. (1998), delivered the BTSS on two occasions to sixty-two children aged between 4 and 10 year olds with a period of several weeks in between and demonstrated a nonsignificant correlation on the Total Suggestibility scale ($r = .66$). The authors found that scores on the yes-no ($r = .67$) and alternative ($r = .65$) questions also demonstrated a non-significant correlation.

The weakest nonsignificant correlation for test-retest reliability in this dataset was repeated questions ($r = .32$) which demonstrated a weak correlation over time.

However, in an exploration of the construct scales, as opposed to differing question type, Candel et al. (2000) delivered the BTSS to 5 to 9 year olds ($n = 48$) and retested them on the same story six weeks later. They found much higher retest correlations when considering the two subscales and the Total Suggestibility score (Yield, $r = .90, p < .05$; Shift, $r = .78, p < .05$; and Total Suggestibility, $r = .90, p < .05$). It is worth interpreting these results with caution due to the potential that a six week retest period allowed recall from the previous testing phase. Alternatively, recall from the previous testing phase may not be problematic in this case, because six weeks is a long time for a young child to remember details. O'Neil and Zajac (2013), for example, have shown that 5 and 6 year olds demonstrate a particular detriment to their recall after a time delay of one month. Therefore, overall it is possible to posit that the BTSS shows sufficient test-retest reliability.

Validity

Validity is defined as the concern of “whether an instrument is indeed measuring what it purports to evaluate, that is, the construct of actual interest” (Raycov & Marcoulides, 2011, p. 183). Consequently, an instrument which is valid can be considered high quality as it is able to make inferences about the construct being measured beyond the testing conditions. Defining validity is not an all or nothing science; Raycov and Marcoulides (2011) argue the aim is to develop a strong case for the existence of validity using instrument validation rather than presuming it to be present or not.

Face Validity

Face validity relates to whether an instrument appears to be measuring what it is supposed to. Being a standardised test, the BTSS aims to measure the extent the participant will concede to suggestible questioning about their memory for a story. Malingering is unlikely, as the participant is shielded from the true nature of the test. Endres (1997) and Endres et al. (1998) adding filler questions which distracted the participants from the true nature of the instrument (i.e., suggestibility to misleading information). These questions are posed in a leading manner but supply correct information (e.g., “And Bettina's friend was called Michaela, wasn't she?”). Therefore, the BTSS appears to be measuring suggestibility in the form of participant acquiescence to the presence of external pressures.

Criterion Based Validity

Criterion based validity is concerned with the extent to which one can predict a subject's score on another variable or criterion of interest from scores on the instrument (Raykov & Marcoulides, 2010). This is important in circumstances where we wish to evaluate potential future performances, for example, the BTSS is concerned with predicting how likely a child will be susceptible to suggestibility when put in a high demanding situation such as cross-examination in a criminal trial. Criterion validity comprises two elements; concurrent and predictive validity.

Concurrent Validity.

Concurrent validity explores how well the test correlates with other tests claiming to measure the same construct; new tests can be evaluated against existing tests to establish if a correlation exists. Roma et al. (2011) compared the BTSS with the GSS (the adult scale on which the BTSS is based) with 84 children aged between 8 and 10 years old. The authors found strong correlations between scores on the two tests for

the Yield and Total Suggestibility subscales ($r = .71; p < .001$ and $r = .72; p < .001$ respectively) but a weak correlation for the Shift scale ($r = .33; p < .05$). This weak correlation can be explained by the fact that the BTSS and GSS assess the Shift variable differently; the BTSS repeats eight of its questions and does so immediately after the child's original response, whereas the GSS repeats twenty questions after a delay. Roma et al. (2011) state that the BTSS replicates real life; forensic interview and cross-examination questioning patterns are more likely to repeat only some of the questions and do so in an immediate fashion.

Roma et al. (2011) compared the BTSS with the similarities and vocabulary subtests of the Wechsler Intelligence Scale for Children Revised (WISC-R, Wechsler, 1974) and Raven's Colored Progressive Matrices Test (CPM, Raven et al., 1998). The results showed that the Yield (vocabulary $r = -.34; p < .05$, similarities $r = -.38; p < .05$, and CPM $r = -.24; p < .05$) and Total Suggestibility (vocabulary $r = -.24; p < .05$, similarities $r = -.37; p < .05$ and, CPM $r = -.29; p < .05$) scales correlated negatively with the cognitive tests but the correlations for the Shift scale were not statistically significant (vocabulary $r = -.13$, similarities $r = -.26$ and, CPM $r = -.26$). This suggests that the Yield and Total Suggestibility subscales of the BTSS may be influenced by cognitive factors (e.g., better cognitive abilities may mean the child is less likely to acquiesce to leading questioning), but scores on the Shift scale may be influenced by situational factors (e.g., the stress of attending a forensic interview or being cross examined).

Predictive Validity.

Predictive validity relates to the ability of the test to predict future behaviour. For example, one might want to consider how far the BTSS is able to predict

suggestibility of a child during a future forensic interview or cross-examination situation. Endres (1997), at the time of publishing the initial findings into the BTSS, had not been able to demonstrate that the BTSS was able to predict subsequent suggestibility in real investigations and it has not been possible to identify any literature which has explored this relationship in this present chapter. The predictive validity of comparable adult scales, such as the GSS, appear to be acceptable (Mercklebach et al., 1998). However, a conclusion regarding the predictive validity of the BTSS specifically, cannot be drawn at this time.

Content Related Validity

Content validity is concerned with whether the instrument measures all possible aspects of the construct being measured. This allows for a full and accurate measurement to be made; if elements of the construct are missing the scale would not provide an accurate picture. Interrogative suggestibility theory underpinning the BTSS conceives suggestibility as an interaction between the motivational aspects, cognitive abilities, and individual suggestiveness of the witness. That is the witness has certain predispositions to interrogative questioning which, under specific circumstances, are likely to heighten subsequent suggestibility. For example, the developmental level of a child (cognitive factor) was examined by Volpini et al. (2016) who, using a sample of 92 children aged between 3 and 6 years old, demonstrated that the Shift subscale was related to situational factors (the desire to appear socially compliant increasing with the age of the child) and the Yield subscale was associated with cognitive factors (the younger the child the less their cognitive facilities have developed and the more likely they will show acquiescence bias).

The research by Volpini et al. (2016) indicates that suggestibility is influenced by both cognitive factors (e.g. developmental level, age, intellectual functioning) and situational factors (e.g. interrogative questioning style, social conformity). The BTSS does not measure either situational or cognitive factors; rather it measures the extent of suggestibility. Therefore, for a more thorough measurement of suggestibility, the BTSS may require supplementation with other assessments including clinical interviews with the child, their caregivers or other adults such as teachers who have observed the child over a period of time, and cognitive testing (for example, WISC-IV, Wechsler, 2003; or CPM, Raven et al., 1998). As such it is not possible to conclude the BTSS definitively measures the construct of suggestibility as a whole entity; merely the presence of one aspect of it.

Construct Related Validity

Construct validity, often considered the gold standard of validity, is concerned with the correlation of the construct under investigation (interrogative suggestibility) with other variables known to be linked. This can tell us to what degree performance on a task is influenced by both the construct under investigation and by other related constructs (Raycov & Marcoulides, 2011). There is currently no psychometric measure available to consider convergent and divergent validity because the BTSS superseded all other suggestibility measures for children. As such, this critique will examine age, cognitive factors and psychosocial factors which the wider literature would suggest are associated with suggestibility.

Age Factors

The commonplace expectation is that the younger a child is, the more likely they will be suggestible to leading questions (Endres, 1997). A negative relationship between

suggestibility and age (considering higher mental ability as determined by normal cognitive development for that age group) has been highlighted within the BTSS (Endres, 1997). The age factor was pretty predominant in the yes-no questions, demonstrating that younger, and less cognitively developed, children are particularly susceptible to suggestibility effects when faced with a forced-choice questioning style. Other research studies in the wider literature have also indicated a negative correlation between age and suggestibility; that is the older a child is, the less likely they will be influenced by suggestible questioning (Finnila et al., 2002; Singh & Gudjonsson, 1992; Warren et al., 1991). Similarly, Benatti et al. (2018), presenting the results of the Italian standardisation of the BTSS ($n = 1,098$ children aged between 4 and 11 years old), demonstrated a significant inverse correlation between suggestibility and age ($r = -.40$; $p < .01$). Together, this suggests that scores on the BTSS behave as expected by broader findings in the literature regarding age (i.e., BTSS scores decline with age) and therefore age factors should be considered when assessing a child's potential level of suggestibility.

Moreover, using the GSS, it has been demonstrated that adolescents are no more likely to yield to leading questions than adults (Gudjonsson & Singh, 1984); however, they are more likely to acquiesce to negative feedback on the Shift scale (Warren et al., 1991; Singh & Gudjonsson, 1992a). Conversely, children under the age of 12 are more likely to be suggestible to both Yield and Shift scales than adolescent and adult populations (Candel, 2000; Gudjonsson, 1984a). This indicates that children under the age of 12 are more suggestible than those over this age; however, adolescents are likely to acquiesce when they are faced with uncertainty about the correct answer, such as when they are faced with repeated questions (Finnila et al., 2002). Gudjonsson (1984)

proposes that from the age of 16, there is very little difference in suggestibility levels compared to groups of adult participants indicating that from this age practitioners should consider applying the GSS rather than the BTSS when assessing for interrogative suggestibility.

Cognitive Factors

Suggestibility, as measured by the BTSS, has been shown to consistently correlate negatively with some cognitive variables including intelligence (Candel et al., 2000; Klemfuss & Olaguez, 2020; Roma et al., 2011; Singh & Gudjonsson, 1992b), executive functioning (Klemfuss & Olaguez, 2020), and memory performance (Candel et al., 2000, Endres et al., 1999). Yield demonstrates a stronger negative correlation with cognitive variables than Shift for younger children, suggesting that level of cognitive development influences a child's likelihood to assent to social pressure within a forensic interview or cross-examination situation (Roma et al., 2011). Volpini et al. (2016) concur, stating that older children are more likely to acquiesce to negative feedback from an interview and shift their answers as a result. Therefore, this indicates that administration of the BTSS should be conducted in conjunction with other measures of cognitive ability in order to ensure all possible influences are accounted for within the assessment.

There is a lack of research regarding the use of the BTSS among populations of children with intellectual disabilities and developmental disorders, such as autism spectrum disorder and down's syndrome. In a review of the broader suggestibility literature, Klemfuss and Olaguez (2020) found that children with such conditions are consistently more suggestible than comparison populations of typically developed children. The literature consistently shows that children with intellectual disabilities are

no more suggestible than children with a matched mental age (Klemfuss & Olaguez, 2020); therefore, practitioners in the Criminal Justice System should be sensitive to mental age in children with learning impairments (not chronological age) when applying this instrument. In sum, the BTSS as a measure behaves in the way we would expect in relation to the cognitive development of the child; the less cognitively developed the child, the more likely they are to acquiesce to outside influences.

Psychosocial Factors

Both the Yield and Shift scales have been demonstrated to have significant positive correlations with certain psychosocial factors such as poor assertiveness, anxiety (both trait and state), and avoidance in both adult and child populations (Gudjonsson, 1997). A pilot study of the BTSS (cited in Endres, 1997) demonstrated, with a sample of 92 pre-school children, that offering instructional variation (such as suggesting the child answer “I don’t know” when unsure of the answer) reduced errors, furthering the evidence for the importance of situational influences on suggestibility. However, a recent review of the literature has shown that this picture is more inconsistent than first anticipated (Klemfuss & Olaguez, 2020). The recent review concluded that temperament, social avoidance, and distress do not predict suggestibility. A further area for future research is the presence of adverse experiences and trauma in early life; Klemfuss and Olaguez (2020) concluded that children who had been subject to such experiences were consistently more likely to yield to suggestible influences; this justifies the need for further research in this area. In practice, the importance of developmental and situational factors discussed in this section, as applied to the application of the BTSS, emphasises the need for holistic assessment of young people

acting as witnesses and a formulation of need from qualified practitioners rather than the singular application of the BTSS.

Normative Samples

Normative sample measurements relate to whether the test outcome for an individual can be compared to other populations and comparison groups. Normative data (means and standard deviations) for the different question types (yes-no, alternative and repetition) can be found in the following samples displayed in Table 3.1.

Table 3.1

Normative Sample Details for BTSS Data (Different Mean Scores Dependent on Question Type)

Authors	Country	N	Age range	Yes-No mean score (SD Score)	Alternative mean score (SD Score)	Repetition mean score (SD Score)
Endres et al. (1999)	Germany	92	Between 4 and 7 years old	0.64 (0.22)	0.73 (0.25)	0.43 (0.22)
Volpini et al. (2016)	Italy	92	Between 3 and 5 years old	5.65 (1.83)	6.39 (1.58)	2.87 (2.20)
Rossi et al. (2011)	Italy	132	Between 5 and 11 years old	2.74 (1.84)	5.81 (2.17)	4.82 (2.36)
Otgaar & Candel (2011)	Netherlands	100	5-6 years	0.67 (0.22)	0.71 (0.24)	0.69 (0.18)
			7-8 years	0.51 (0.22)	0.58 (0.27)	0.53 (0.19)
			9-10 years	0.45 (0.19)	0.48 (0.36)	0.46 (0.21)
			11-12 years	0.43 (0.15)	0.38 (0.29)	0.41 (0.41)

Authors	Country	N	Age range	Yes-No mean score (SD Score)	Alternative mean score (SD Score)	Repetition mean score (SD Score)
Candel et al. (2000)	Netherlands	48	Primary school aged children	7.5 (2.6)	7.4 (2.60)	10.5 (4.5)
Candel et al. (2005)	Netherlands	50	Primary school aged children	7.3 (2.38)	3.42 (2.09)	10.72 (3.93)
Roma et al. (2011)	Italy	84	Between 9 and 11 years old	6.02 (3.31)	2.71 (1.76)	8.74 (4.59)
Rossi et al (2011)	Italy	132	Between 5 and 11 years old	8.55 (3.36)	4.82 (2.36)	13.37 (4.38)

The samples in the literature reported in Table 3.1 are appropriate for the BTSS as it is designed for children between 4 to 10 years old. Several of the studies stray beyond the age range; for example, Volpini et al. (2016) include 3 year-olds and both Otgaar and Candel (2011) and Roma et al. (2011) include older children (12 years old and 11 years old, respectively). The available literature does not consider normative data for diverse populations; for example, children with learning difficulties and neurological issues, nor does it consider any differences between genders or other individual factors, such as experience of trauma, which may be salient to child witness populations. Moreover, it is not possible to comment on the percentile ranks for the normative samples as these have not been reported in the literature. Therefore, it is difficult to conclude that there are differences in suggestibility between certain subgroups of children (e.g., gender, learning needs or neurodiversity). Further research exploring such differences would assist in building the evidence base for suggestibility and assist practitioners to interpret and understand what an individual suggestibility score means for any individual child.

Standardisation

The BTSS is a standardised test with clear and defined instructions for administration. The test does not require a specific level of training for administration and scoring and the results should therefore be similar between different administrators. The advantages to such an approach are that the results remain objective and simple to communicate to others; it gives a clear indication of suggestibility for an individual child. This is an advantage in the forensic domain because the results are often reported to individuals in the criminal justice system (such as judiciary, crown prosecution service, and defence lawyers) who do not possess formal psychological training.

Conclusion

The aim of this critique was to explore the psychometric properties of the BTSS in relation to interrogative suggestibility and to consider its wider forensic applications. The BTSS is a standardised test which is designed to measure if a child is more or less likely to be suggestible, considering certain questioning strategies. Endres (1997) concluded that scores on the BTSS, and the construct of suggestibility, demonstrate stable and consistent measurement results and are influenced by both cognitive and situational aspects. Further research also supports the hypothesis that younger children are more susceptible to suggestion than adults (Candel, 2000; Gudjonsson, 1984a).

The findings of this chapter indicate that there is limited research on the BTSS. Additionally, there is a paucity of research on the relational aspects of the BTSS. For example, it is not clear if low scorers on the BTSS are less susceptible than high scorers to misleading questions in the eye witnesses testimony literature. Moreover, there a lack of research examining the contrast between the the child as an active or passive witness in an event. This chapter is also unable to make any conclusions regarding the impacts of repeated experiences versus single traumatic events (e.g., is memory strength impacted by confounding variables over multiple events in the same way as single events?). Such gaps in the literature indicates a lack of available normative, reliability, and validity data over varying conditions. This is problematic because, for example, a lack of age norms over differing conditions does not allow for distinction between suggestibility and general developmental levels. The following conclusions should therefore be interpreted with caution.

The reliability of the BTSS was shown to be sufficient in both the Endres (1997) and Candel et al. (2000) evaluations. This demonstrates that the individual questions

within the scales are all measuring the same construct (e.g. all the yes-no questions are measuring acquiescence to yes-no style questions). However, the available literature on internal reliability of the BTSS is negligible and would benefit from further research. Test-retest reliability results from the same two studies indicate differing results. Candel et al. (2000) showed high correlations between the scales indicating a consistency in results over time; however, Endres (1997) demonstrated weaker correlations over time, particularly for the repeated questions, showing that a child may perform inconsistently over a period of time. Both of these studies used relatively short timeframes (six weeks) for their retest which does not give an indication of how the scale performs over a longer period of time. Again, a lack of research means it is difficult to draw robust conclusions; further studies into the reliability of the BTSS would give a more accurate picture.

On the surface, the BTSS appears to be measuring the construct of suggestibility and research reviewed in this paper implies that it has a significant relationship with other scales designed to measure response to leading questioning. Suggestibility is a multi-faceted concept and interrogative suggestibility, as a construct influenced by individual differences, is just one element of a wider picture. Practitioners applying the BTSS should be cautious and include other forms of assessment for both situational and cognitive factors before drawing overall conclusions about suggestibility. Klemfuss and Olaguez (2020), for example, state that the presence of learning difficulties is the most important element in the suggestibility literature and, as such, it is possible to hypothesise that children with learning difficulties may be over-represented in the suggestible population.

Children, by virtue of their cognitive development, are more likely to be influenced by power differentials held by professionals within the forensic system than adult populations (Lamb et al., 2011) and therefore should be treated accordingly during forensic interviews. Significant headway has been made regarding the operationalisation of forensic interviews through safeguards against secondary victimisation as a result of the interview process. However, it is likely that serious situations of high stress, such as a forensic interview or cross-examination, with important outcomes for the individual and others are likely to increase susceptibility to suggestion when there is a clear power differential in the relationship (Vrij & Bush, 2000). However, Endres, et al. (1999) argue that, although pre-school children are very susceptible to suggestion, there is evidence that this can be limited through robust interviewing techniques. Indeed, other research shows that children from a young age are able to give accurate accounts if their memories are tested appropriately (e.g., LaRooy et al. 2013; LaRooy et al., 2015; Otgaar et al., 2020). Therefore, robust interviewing techniques, alongside comprehensive assessment protocols can mitigate the impact of interrogative suggestibility.

The BTSS is most likely to be used in situations where there has been some inconsistency in responses over time and it is likely that the main audience for the results of the BTSS will be professionals without psychological training. The misinterpretation caused by the lack of a clear definition of suggestibility, the role of the BTSS (measuring one discrete facet of suggestibility) and the inability of the scale (due to ordinal level data) to give a precise measurement of suggestibility means that stringent interpretation and presentation of the results is a crucial element of the assessment. A further consideration is that children likely to be tested using the BTSS

are extremely likely to have experienced abuse and trauma; there is not enough research available to understand the impact of trauma on suggestibility and the deliberate misleading of subjects inherent in the BTSS instrument is questionable when applied to someone who has experienced a traumatic episode. Future research should focus on bolstering the evidence base for the construct of interrogative suggestibility in child populations but, in particular, evidence about the internal reliability and predictive validity of the BTSS. From a practical standpoint, further research into the relationship between adverse childhood experiences and subsequent suggestibility would also serve to strengthen the literature.

In sum, this critique has discussed the psychometric properties of the BTSS and considered its applicability in forensic settings. The BTSS can be considered a useful tool for measuring interrogative suggestibility in child witnesses but should be applied with caution, interpreted within the wider context, and not be utilised in isolation.

CHAPTER FIVE

General Discussion

It is generally accepted in the legal arena that young people are considered vulnerable when acting as witnesses and should be afforded special measures to aid them to give their best evidence while experiencing the least amount of distress. The adversarial system of justice applied in many western countries, and the impact of Hearsay rules, which govern the admission of evidence, mean that young people are often expected to be cross examined in live court conditions. The field of investigative psychology is concerned not only with the elicitation of accurate testimony, but also the impact of potentially harmful processes that child witnesses have to endure. Such research has led to the introduction of measures such as the Memorandum of Good Practice (MOGP, 1992), the Achieving Best Evidence guidelines (ABE, Home Office, 2002; 2007; 2011), and the introduction of special measures (Pigot, 1989; YJCEA, 1999).

The aim of this thesis was to explore experiences of young people in the courtroom and the impact of procedures that have been employed to improve the conditions under which they appear as witnesses. To achieve this aim, Chapter One introduced the background to child witness testimony and provided an overview to why the constructs of credibility and suggestibility are important factors in this area. Chapter Two provided a systematic literature review exploring the emotional victim effect amongst a child victim population. Chapter Three examined professional opinion regarding the introduction of pre-trial cross-examination in courts across England and Wales, the only special measure not adopted following the YJCEA (1999). Chapter Four critiqued a psychometric tool used to measure the interrogative suggestibility of

young witnesses (the Bonn Test of Statement Suggestibility, BTSS, Endres, 1997). In this chapter, I will attempt to consolidate the main findings in broad terms, consider why individual differences matter in the commission of child testimony, and discuss the implications for both research and practice.

The Impact of Emotional Presentation of Children on Subsequent Juror Ratings of Credibility

Emotional female adult victims are shown to be rated as more credible than their non-emotional counterparts by jurors in the empirical research base (Nitschke et al., 2019). Jurors are lay members of the public who possess no formal training and who are chosen at random to make decisions about guilt based upon the evidence given at trial. In the absence of other forms of evidence such as DNA and CCTV footage, the prosecution's case often relies on being able to provide a credible witness and the defence's case depends on being able to discredit the witness's version of events. Psychological research has shown two possible mechanisms that could influence juror responses; first, juror decision making is governed by stereotypes, beliefs and other heuristic processing of the child's demeanour and emotional presentation (Hackett et al., 2008; Klippenstein & Schuller, 2012) and second, a compassion affective response underpinned by empathy towards victims of crime (Ask & Landström, 2010). To date, no attempt had been made to consolidate the research regarding this effect amongst child victims acting as witnesses.

A systematic review of five databases identified eight papers which explored the impact of the emotional victim effect on child victims. All eight of the studies showed that when the child victim presented as "sad", it increased subsequent mock juror ratings of credibility. Three of the included studies extended their research to explore

different types of emotional presentation (sad, happy, angry, and neutral) and found that the “sad” condition still yielded higher credibility ratings than the other emotion types (Melinder et al., 2016; Wessell et al., 2013; Wessell et al., 2016). The age of the child, gender of the participants, type of crime, and presentation mode all yielded higher credibility ratings for “sad” presenting child victims demonstrating that this effect was consistent across different condition types.

Overall the systematic review supports the idea that adult jurors are impacted by the emotional victim effect when making decisions of credibility regarding child victims acting as witnesses. This has implications for practice as emotional presentation alone is not an accurate predictor of actual credibility. According to trauma frameworks, children who have experienced a traumatic event will present in a variety of ways (Kanan & Plog, 2015), and therefore relying on emotional presentation alone could lead to poor legal judgements. Considering the impact of this effect on the wider criminal justice system, children come into contact with a range of adult professionals (such as police officers and social workers) prior to their court appearance, where judgements of their credibility will be made. These judgements are liable to be impacted by the same mechanisms underlying the emotional victim effect that affect jurors. Such judgements could potentially impact how the case is investigated and possible welfare decisions regarding the child. Suggestions for changes to practice include the concrete example of removing questions regarding demeanour from official paperwork (such as the forensic medical examination questionnaire adopted in England and Wales, 2020).

The review highlighted the need to consider whether the introduction of judicial instruction, or the extended use of trained experts and intermediaries, would be a useful way to mitigate the impact of the emotional victim effect. This would be especially

important in cases where the child has additional needs such as a learning disability or neurodevelopmental needs. In conclusion, the review highlights the profound consequences that juror decision making has on all of the players in a court trial. It is crucial that the system is able to mitigate the impact of the emotional victim effect during criminal trials and at other stages of the criminal justice process.

Professional Opinion of the Introduction of Section 28 Pre-Trial Cross-examination

Young witnesses appearing in criminal trials in England and Wales have historically been expected to give evidence and be cross examined in a live court situation which raises concerns regarding both the accuracy of recall and the potentially retraumatising impact of the defence's cross-examination styles. As a result of these concerns the Pigot committee (1989), whose aim was to explore the extension of the use of video recorded evidence in the courtroom for vulnerable witnesses, suggested three special measures be introduced following concerns about young people acting as witnesses; 1) pre-recorded video evidence, 2) pre-recorded cross-examination, and 3) the use of intermediaries. Only the first of these (pre-recorded evidence, also known as Section 27) was initiated in the Criminal Justice Act (1991). The Report of the Interdepartmental Working Group on the Treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System: Speaking Up for Justice (1998) was published nine years later and prompted the inclusion of the second and third suggestions from the Pigot committee into the Youth Justice and Criminal Evidence Act (YJCEA, 1999). However, the use of pre-recorded cross-examination (known as Section 28) was not adopted as common practice until recently.

The aim of Chapter Three was to explore the opinions and perspectives of professionals working with young witnesses of the introduction of Section 28. The 2016 pilot study consulted professionals, including police officers, but no research has been produced since this point; there has been no attempt, to date, to consult professionals from the charitable sector who often play an important role in the support of young witnesses. The participants were asked what they felt the benefits and shortcomings of the new system would be. The police participants were asked a further question regarding the impact of Section 28 on defendants. In total three superordinate themes were identified: (a) court as a distressing experience for young people, (b) need for careful application, and (c) the impact of Section 28 on defendants.

The first superordinate theme stated that court is a distressing experience for young witnesses, further exemplified by the subthemes of uncertainty, disempowerment, and expectation not matching reality. This was replicated in the literature base which highlights the shame of appearing as a witness, intimidation of the court environment, and concerns of seeing the defendant face to face named as the biggest barriers for young witnesses (Cooper, 2005; Finklehor & Browne, 1985).

The second superordinate theme identified was the ‘Need for Careful Application’. The participants felt Section 28 will create “distance” between the young person and the court process both physically and emotionally, for example, having the hearing at a specified time will reduce delays and “hanging around”, both of which increase the uncertainty experienced by the young witness. A further example of the procedures being introduced to provide an environment for the young person to give their best possible evidence is the implementation of ground rules hearings. These aim to control the questions asked to the young person during their Section 28 hearing and

therefore limit the amount of suggestive questions and linguistically challenging methods utilised by the defence. Therefore, ground rules hearings are likely to reduce the distress experienced by young people through the disempowering methods employed by professional adults. These predictions were replicated in the literature base with several researchers predicting that the application of pre-trial cross-examination would reduce the stress experienced by young people, by removing uncertainties from the process. The participants were hesitant, however, about the use of Section 28 as an unconditional directive for all witnesses under 18 years old. Individual choice and ability to voice an opinion regarding which special measures, if any, should be applied was seen as important by the charity workers for young people's sense of justice; removing this choice was seen as further disempowerment of young people by well-meaning professionals. The police participants questioned whether removing the child too far from the process would lead to a loss of salience; this was named in the literature as a concern not only for the child witness themselves (Hoyano, 2000) but also the other non-professional players in the process such as jurors (Davies & Hanna, 2013; Hamlyn et al., 2004; Payne, 2009).

The final theme related to police perspectives of defendants and Section 28. They felt that generally defendants would consider Section 28 an unfair advantage for child witnesses. Additionally, police supported the notion of vulnerable defendants being offered Section 28 hearings "in the right circumstances". Since the completion of this research project, it has been announced that vulnerable defendants will have access to particular special measures including intermediaries at the discretion of the judiciary with neurodiversity populations being cited as a particular group of focus. The literature

demonstrates limited research in regard to the application of Section 28 to defendants (Fairclough, 2017) and this is therefore a subject for further research.

This study has demonstrated that Section 28 could be a useful tool in the attempt to provide a comfortable environment for child witnesses to give their best possible evidence, however, the participants have raised an important question regarding the careful application of the measure, arguing that unconditional application, without consideration of individual need, could mitigate the potential benefits of the scheme. The chapter concludes that professionals and policy makers involved in the management of the courtroom would benefit from adapting their practice based on the provision of trauma-informed environments. Such literature considers the impact of trauma-informed practice on the individual, operational, and strategic levels (Knoche et al., 2018; SAMHSA, 2014).

Interrogative Suggestibility and its Measurement in Child Witnesses

It is crucial to the administration of justice that testimony is not impacted by fabrication, deception, or error. The interrogative suggestibility model posits that suggestibility is the result of interaction between the individual, the environment, and other players in that environment. The model defines two main constructs behind suggestibility; yield and shift. Yield relates to the likelihood of the individual to acquiesce to leading questioning styles and shift to the amount the individual is likely to react to interrogative pressure techniques (such as those seen in cross-examination). The Gudjonsson Suggestibility Scale (GSS, Gudjonsson, 1997) was developed as a response to research into interrogative suggestibility. However, it is deemed too complex for application to child populations and therefore the Bonn Test of Statement Suggestibility (BTSS, Endres, 1997) was developed to counter this limitation. The BTSS is aimed at

the child prosecution witness as opposed to the GSS, which is generally used with adult defendants at the point of appeal. Therefore, the BTSS is better suited for use in countries which employ an inquisitorial, as opposed to an adversarial, system.

Introduction of BTSS evidence by the prosecution into an adversarial system would be subject to the “unused evidence” rules of disclosure to the defence who may use the results to discredit the witness. It is possible that introduction of a measure to determine credibility may also be viewed as trespassing on the role of the jury in an adversarial system.

A review of the BTSS in Chapter Four explored the reliability and validity of the instrument and discussed its application to practice. The chapter overall concluded that the BTSS demonstrates sufficient reliability and validity for application in the forensic field, but the literature available on this is limited and the results should therefore be interpreted with caution. In particular, the chapter summarises the need for further testing of children, due to the multifaceted nature of suggestibility, including the interaction between different factors such as cognitive ability, psychosocial factors, and age. A further concern is that the results of the BTSS are often presented to audiences who lack psychological training (judiciary, legal teams, and lay members of the public acting as jurors). This might be problematic because they may not understand the shortcomings and implications of the tool. Practitioners should therefore not apply the BTSS in isolation; the robust investigation of cognitive development and situational concerns should form part of the interpretation and conclusions regarding suggestibility.

Moreover, practitioners should be mindful of the power differentials that exist in the forensic world (Randell et al., 2018) and how stress will impact on the acquiescence of a child to an individual in authority when they have experienced a traumatic event

(Klemfuss & Olaguez, 2020; Quas et al., 2005; Westcott & Page, 2002). Of particular concern in this regard is children with additional needs such as learning difficulties or neurodevelopmental conditions (Bottoms et al., 2003; Brown & Lewis, 2013; Crane et al., 2018, Mandell et al., 2005). In sum, the chapter tentatively concludes that the BTSS can be considered a useful tool in measuring suggestibility but only when interpretation is determined in the wider situational context and applied with caution.

Why is this research important?

Chapter One of this thesis posed the question “do child victims make good witnesses?”. Chapters Two, Three and Four highlight that the evidence of children is important and can have significant consequences for all parties involved. For example, for the young people themselves, appearing as a witness can be potentially retraumatising, For the defendant, it can significant consequences from the perspective they could face a potential loss of liberty if incarcerated. This thesis highlights that children are capable of giving credible and compelling evidence in criminal trials so long as they are afforded the best possible conditions to meet their individual needs to give that evidence.

One of the biggest issues raised by this thesis is the failure to consider children in an individual manner. Chapter Two highlights the tendency of adults to make decisions based on stereotypes and heuristics regarding the child’s emotional demeanour; this is problematic because children who have experienced a traumatic event may not present in the way expected by an adult (Kanan & Plog, 2015). Decision making throughout the criminal justice process, from investigation to juror assessment of credibility, could potentially be influenced by these biases, rather than considering the child’s individual circumstances and reactions. Chapter Three, which considered

professionals' perspectives of the new Section 28 pre-trial cross-examination scheme, highlighted the need for all professionals involved in the roll-out to consider each child's individual needs and sense of justice, rather than adopting an unconditional approach to application. Additionally, Chapter Four concludes that a tool to measure suggestibility should not be used in isolation, but rather as part of a wider assessment of situational and individual factors. Application of the BTSS in isolation is far too simplistic a method to evaluate the multifaceted nature of suggestibility constructs in different children.

This thesis also highlights contemporary practices with child witnesses in England and Wales. It shows that within the past 30 years significant reforms have exponentially changed the experiences of child witnesses with far more focus on improving the conditions in which young people testify. However, there are still significant barriers to overcome such as societal attitudes regarding the credibility of witnesses (as outlined in Chapter One) and the disempowering nature of the courtroom environment (as outlined in Chapter Two).

Practical Implications

The appearance of child witnesses in court has significant consequences for the players in the trial. This thesis has identified some important real life suggestions regarding future practice with child witnesses.

First, it is vital that all child witnesses are treated as unique individuals with their own diverse needs. Chapter Two demonstrates that children can present in a variety of different ways and adult juror heuristic decision making is not an accurate predictor of credibility. Chapter Three highlights that children should be considered as autonomous individuals who should have a say in which special measures are applied to

their court appearance. Chapter Four demonstrates that psychometric measures alone are not sufficient to make judgements on suggestibility specifically, as this is a multifaceted concept (impacted by cognitive, developmental and psychosocial factors) and often the results are presented to lay audiences who require further contextualisation of a child's circumstances. These points make a reasoned argument for the need for the application of individual, in depth assessment of each child witness. This is especially relevant in relation to those children with additional or neurodiverse needs, or who have experienced trauma.

Second, this thesis has identified the need to consider the wider courtroom surroundings the child experiences when they are acting as a witness. Chapter Two and Chapter Four both highlight the need for additional support for juries regarding the complex information they are required to consider. For example, Chapter Two suggests that judicial instruction and expert opinion could be used to help jurors navigate emotional and trauma-related presentation of child witnesses and therefore avoid making decisions of credibility based on heuristic processing alone. However, research indicates a need to be cautious about adopting judicial instruction due to the propensity for this to also alter perceptions of the credibility of child witnesses (Eaton et al., 2001; Stebley et al., 2006). Chapter Four suggests that jurors and professional players, such as legal counsel and members of the judiciary, would benefit from the support of psychologists in order to understand the wider contextual situation of the child witness when making decisions related to suggestibility. Moreover, Chapter Three highlights a need to consider how courtrooms could employ a trauma-informed approach to their milieu to improve the experiences of child witnesses.

Theoretical Implications

This thesis has identified several limitations in the current knowledge-base that would benefit from further exploration. Chapter Two identified some of the limitations in mock juror studies relating to the replication of the true juror experience. For example, many of the studies required testing to take place in a quiet environment and decisions to be made in isolation from others which does not replicate the true juror experience of cognitive load (Melinder et al., 2016; Wessel et al., 2013; Wessel et al., 2016) and the influence of groupthink (Neck & Moorhead, 1992). Chapter Three, as a qualitative study, is a snapshot of the current roll-out of Section 28 nationally and would benefit from further studies of different professional disciplines, locales, and over time as the scheme progresses. Chapter Four highlighted that suggestibility research tends to question children regarding third hand innocuous events rather than potentially traumatic first hand events that a child has experienced, this does not account for the way that trauma impacts on memory and functioning (Klemfuss & Olaguez, 2020). Moreover, there is a paucity of research regarding children who are not neurotypical, either through a neurodiverse presentation (such as autism spectrum disorder) or other additional needs, in relation to being child witnesses (Bottoms et al., 2003; Brown & Lewis, 2013; Crane et al., 2018, Mandell et al., 2005).

Subsequently, future research should aim to address some of the gaps identified above. It is important that evidence based practice comes from research which has a theoretical basis and which replicates real life experience as far as possible and accounts for all individual needs.

Conclusions

This thesis aimed to explore the experiences of child witnesses in the court system in England and Wales and to evaluate current methodologies applied by the

criminal justice system to young witnesses. The findings indicate that young people are vulnerable within this system and current safeguarding mechanisms may not be going far enough to provide an environment for children to give their best evidence and avoid retraumatisation.

In conclusion, every young person appearing as a witness in England and Wales should be considered individually and their unique needs, preferences, and circumstances should be taken into consideration prior to court appearance. Suggestions have been made in this thesis as to how practitioners can improve practice, including: the introduction of judicial instructions, extended use of expert witnesses and intermediaries to support young witnesses, the accurate representation of young people's wishes regarding their court appearance in relation to special measures, and full assessments of need conducted by appropriately trained professionals. It is hoped that these findings will inform future research and practice in this important area for young witnesses.

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Appendices

Appendix One: Quality Assessment Form

Questions	Yes/No/partial	Comments
<p>1. Did the study address a clearly focused issue?</p> <p>HINT: An issue can be ‘focused’ In terms of the population studied/the intervention given/the comparator given/the outcomes considered</p>		
<p>Was the assignment of participants to conditions randomised?</p> <p>HINT: Consider how this was carried out. Was the allocation sequence concealed from researchers and participants</p>		
<p>Were all of the participants who entered the trial properly accounted for at its conclusion?</p> <p>HINT: Consider was the trial stopped early? Were patients analysed in the groups to which they were randomised</p>		

Worth continuing?		
Were participants and researchers 'blind' to treatment?		
Were the groups similar at the start of the trial HINT: Consider other factors that might affect the outcome, such as; age, sex, social class		
Aside from the experimental intervention, were the groups treated equally?		
How large was the outcome measure? HINT: Consider what outcomes were measured. Is the primary outcome clearly specified? What results were found for each outcome		
How precise was the estimate of the outcome? HINT: Consider what are the confidence limits		

<p>Can the results be applied to the local population, or in your context?</p> <p>HINT: Consider whether the patients covered by the trial are similar enough to the participants to whom you will apply this/how they differ</p>		
<p>Were all clinically important outcomes considered?</p> <p>HINT: Consider whether there is other information you would like to have seen. If not, does this affect the decision</p>		
<p>Are the benefits worth the harms and costs?</p> <p>HINT: Consider even if this is not addressed by the study, what do you think?</p>		
<p>Quality score:</p>		

Appendix Two: Data Extraction form

General information

Date form completed	
Name of person completing form	
Report title	
Publication type	
Authors	
Country	
Possible conflicts of interest	

Eligibility

Type of study	
Population – inc method of recruitment, age range, total number	
Brief description of methodology	
Outcome measures	

Methods:

Aim of study	
Design	
Sampling technique (Random, convenience)	
Notes	

Outcomes

How were outcomes measured? (Describe)	
---	--

Results

Outcome/results	
Other results	
Statistical methods used (appropriate?)	
Results weighted?	
Notes	

Litigation/mitigation

Strengths	
Limitations	
Strategies to overcome limitation	
Notes	

Key conclusions

Key conclusions	
Notes	

Quality assessment

Was the study's target population a close representation of the national population in relation to relevant variables?	
Was the sampling frame a true or close representation of the target population?	
Was some form of random selection used to select the sample	
Were data collected directly from the subjects?	

Was the study instrument that measured the parameter of interest shown to have validity and reliability?	
Was the same mode of data collection used for all subjects?	
Notes	

Appendix Three: Recruitment Flyer



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Research participants wanted!!

Project title: **The Introduction of Pre-Trial Cross-examination: A Thematic Analysis of the Experiences of Professionals**

Purpose of the study:

Pre-trial cross-examination (Section 28) is a new special measure afforded to young people and vulnerable witnesses; the distinction from traditional methods being the witness provides their evidence, and is cross examined, prior to the commencement of the trial. This process is videotaped and subsequently played to live court reducing the need for the witness to appear in court. Pre-trial cross-examination is due to be rolled out across the UK imminently

I am interested in finding out about the opinions of professionals from the police, crown prosecution service, witness service and charitable sector regarding the use of pre-trial cross-examination (Section 28) with young people aged under 18 years old.

The aim will be to use the opinions collected to improve young people's experiences in court and to guide the important people who make the decisions about how services will develop in the future.

What will I have to do?

I will invite you to attend an interview it should take no longer than an hour. I will need to make an audio recording of the interview; your interview will be kept confidential.

What happens with the findings?

I am doing this research study as part of my Doctorate in Forensic Psychology at the University of Birmingham. The results from this research will be:

- Handed in to the University of Birmingham for marking as part of my thesis.
- Shared with other relevant people (such as other academics at conferences or published in journals).

What happens now?

If you are interested in taking part, or for more information, please contact me at

Appendix Four: Participant Information Sheet



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Participant Information Sheet

Project title: **The Introduction of Pre-Trial Cross-examination: A Thematic Analysis of the Opinions of Professionals**

Purpose of the study:

I am interested in finding out about your opinions regarding the use of pre-trial cross-examination with young people aged under 18 years old. I would like to hold remote interviews with professionals working in the sector to hear their opinions of this. The aim will be to use the opinions collected to improve young people's experiences in court and to guide the important people who make the decisions about how services will develop in the future.

Why have I been chosen?

I am inviting you to participate in a research study as you are either employed in professional role within the criminal justice sector. You should have knowledge about the proposed pre-trial cross-examination scheme specifically with young people aged under 18 years old. Taking part in this study is your choice – I am happy to answer any questions you may have.

Do I have to do this?

No! It is your choice whether you would like to participate in the interview. You also have the right to stop if you change your mind.

What will I have to do?

I will invite you to attend a remote interview it should take no longer than an hour. I will need to make an audio recording of the interview.

What are the possible disadvantages to taking part?

The interview will discuss your experiences within your professional role. Professionals often feel strongly about their roles and are passionate about expressing their opinions. I will be available for a short time following each interview for debrief as needed, I will be contactable via email following the interview and I will encourage you to utilise your line management procedures as needed.

What will happen after the interview?

If you decide you no longer want to take part in the study you can do so by letting me know at any point during the study. Once we have completed your interview you will

have a two-week cooling off period to contact me should you wish to withdraw your data. Once the two-week cooling off period has passed your data will automatically be included and it will not be possible to withdraw your data.

Do I have the right to withdraw?

You have the right to withdraw from participation during the research process. If you decide you would like to withdraw between the recording and subsequent transcription (a period of approximately two weeks) then your information will not be included in the transcription document and the audio recording will be destroyed. There will be no consequences for you for withdrawing from the study. Once the two-week cooling off period has passed the data will then be transcribed and used as part of the research; withdrawal following the cooling off period will not be possible.

What happens with the findings?

I am doing this research study as part of my Doctorate in Forensic Psychology.

The audio recordings of the interviews will be kept in the University of Birmingham Secure Store. I will also store any computer records on the University of Birmingham Secure Store

To mitigate the possibility of participants being identified you will be given an anonymous code name in the write up of the research (such as a colour). I will also try my best to safeguard against identifying details from being included in the research; the nature of qualitative research however is such that there is always a slight possibility that you could be recognised. I will attempt to mitigate this as far as possible.

All of the feedback I collect I will keep confidential from anyone not involved in the research process. The exceptions to this will be:

- if you tell me something which makes me worried for a young person's safety. I may have to pass on this information if this happens to other agencies who are responsible for safeguarding young people
- When I am writing up the results I will be using quotes from the interview which may make you recognisable to certain individuals. I will take all measures to minimize this impact such as removing names, case information, locations and other identifying characteristics.

The results from this research will be:

- Handed in to the University of Birmingham for marking as part of my thesis.
- Shared with other relevant people (such as other academics at conferences or in journals).

The consent forms for this research will be securely kept by the University of Birmingham for at least 10 years after which they will be destroyed

What happens now?

I will send you a consent form to sign and will arrange to meet you remotely at a convenient time for the interview. If you would like to contact me in the meantime you can email me at krowsell@hull.ac.uk I look forward to speaking with you!

Kathryn Rowsell (Trainee Forensic Psychologist)

Appendix Five: Participant Consent Form



**UNIVERSITY OF
BIRMINGHAM**

**INFORMED CONSENT FORM
SCHOOL OF PSYCHOLOGY**

PROJECT TITLE:

Project title: The Introduction of Pre-Trial Cross-examination: A Thematic Analysis of the Opinions of Professionals

Please initial

1. I agree that I have read and understood the Participant information sheet for the above study and have had the opportunity to ask questions.

Initial.....

2. I understand that my participation is my own choice (voluntary) and that I am free to stop at any time during the study without giving a reason.

Initial.....

3. I understand that all the information I provide will be treated in confidence (except in situations where a safeguarding issue arises) and only disclosed to people detailed on the Participant Information Sheet. I also understand that the University will keep this consent form securely for at least 10 years.

Initial.....

4. I understand that my identity will be kept confidential (except in situations where there is a safeguarding concern). I understand that the research will use quotes from the interview and there is a small chance that I may be identified from these quotes.

Initial.....

5. I understand I have the right to withdraw from the research within a two-week period following the interview. If I decide to withdraw I will contact the researcher to make her aware and understand that my data will not be included in the transcription.

Initial.....

6. I understand that the information I give will be treated according to the British Psychological Society/HCPC Code of Ethics and the study will be reviewed by University of Birmingham's ethics committee.

Initial.....

7. I agree to be audio recorded and for anonymised quotes to be used as part of the research project.

Initial.....

8. I agree to take part in the research project.

Signature of participant: _____

Date: _____

Signature of researcher: _____
Date: _____

Appendix Six: Debrief Sheet



Debrief sheet

Thank you for taking part in the interview – your time and opinions are really appreciated! The aim of the study is to collect feedback from professionals who, as part of their professional role, have knowledge of the proposed pre-trial cross-examination scheme for young people aged under 18 years old. The feedback will be used to improve the services delivered to young people.

If you have any questions about the study you can email me at

If at any point you have concerns about any aspect of this research please contact Dr Melissa Colloff at the University of Birmingham. You can call her on or you can email her at

THANK YOU AGAIN FOR TAKING PART IN THIS RESEARCH. IT WAS A PLEASURE TO MEET YOU!

Appendix Seven: Interview Schedule



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Interview schedule

Introduction (to be read to participants at start of the interview):

Hello and thank you for agreeing to take part in this study. I am looking for feedback from professionals regarding your perspectives of the use of pre-trial cross-examination (also known as Section 28) with young witnesses. Your participation today is voluntary and you are free to stop at any point during the research process without giving a reason.

I will be recording our feedback session today on an audio digital Dictaphone. All information you give me will be treated in confidence with the exception of any safeguarding matters which arise. These will be passed on to Thames Valley Police. This research will use quotes from our interview and there is a small chance you may be recognised from these quotes. For example, you may tell me about a case you investigated. Your colleagues may be able to identify your experiences having worked alongside you.

Following our interview, you will receive a debrief sheet with my contact details on and will be given a two week “cooling off” period. If you withdraw during this two-week period your data will not be included in the subsequent analysis. Once the two-week period has passed your data will not be able to be withdrawn.

I would like to send you a brief follow-up questionnaire via email in approximately three months’ time. Please can you tell me if you are happy to receive this?

I have some questions to ask you today and I may ask follow up questions as needed. Do you have any questions for me before we start?

I would like to ask you firstly about your experiences of the traditional trial and cross-examination processes

Question One:

Can you tell me about your experiences of supporting young people through both the trial process and cross-examination?

Question Two:

Can you describe to me some of the feedback you have received from young people and their supporters regarding their experiences of trial processes and cross-examination?

Question Three:

Can you explain to me how you feel pre-trial cross-examination will change the experiences of young people who are witnesses in criminal trials?

Question Four:

Can you describe to me any challenges you can foresee, or have experienced, with the implementation of pre-trial cross-examination?

Question Five:

Can you describe to me any benefits you can foresee, or have experienced, with the implementation of pre-trial cross-examination?

Question Six:

What do you think could be done differently to improve the experiences of young people undertaking pre-trial cross-examination?

Question Seven:

Can you describe to me any operational challenges you can foresee, or have observed, in the introduction of Section 28?

POLICE OFFICERS ONLY

Question eight:

Can you describe to me what impacts do you think Section 28 will have on the defendant or defendants?

Question Nine:

Can you tell me your perspectives on vulnerable defendants being offered the opportunity to be cross examined via Section 28 methodology? For example, being cross examined prior to the trial and video recorded, the use of ground rules hearings or intermediaries.

Appendix Eight: Reflexive Statement

I am a 40 year old, white British female. I live in Oxford with my partner. I studied for my BSc in Psychology and MA in Applied Criminal Justice and Criminology between the ages of 18 and 24. During this period I started working in the forensic field with young offenders and adults in a Medium Secure Unit. Upon completion of these degrees I worked full time with young offenders for a total of sixteen years and concurrently within the charitable sector for ten years working with young people affected by crime. Clinically I lean towards models of practice which integrate experiences of trauma and strengths based practice.

I became interested in this research area during my time working within the charitable sector and training to become an Independent Sexual Violence Adviser. I have had experiences of supporting young witnesses through trial and worked closely with other organisations in the local area who supported witnesses including the development for specialist forums for professionals working with both victims of sexual crimes and young people appearing as witnesses in criminal trials. I wanted to express the importance of the participants lived experiences, thoughts, feelings and assumptions in order to affect change in a system I have worked for a long period of time.

I was aware that, having been employed as an experienced and passionate practitioner within this field, I hold pre-existing attitudes and perspectives. My previous employment was for the charitable sector organisation included in this research and I therefore have a pre-existing relationship with the staff members being interviewed. Some of these relationships were of a peer level, but some of the members of staff I had previously managed. I was also aware of my position in the charity as someone with a high level of knowledge of the subject (having previously delivered a training package on young people as witnesses) and I therefore (to minimise impression management) had to make it explicit during recruitment that my position for this research was one of an observer and I was interested in perspectives rather than knowledge levels. I did note that some of the charity workers were very comfortable around me interviewing them and I did not, overall, pick up on any awkwardness. However, I did notice that some of the participants orientated me as an “expert” because of the fact I was conducting the research. This led to a reflection I had that actually “no one is an expert in this yet”. Pre-

trial cross-examination is a new initiative and therefore we (children, families, frontline professionals and researchers) are going through this for the first time together.

I anticipated that the charitable sector workers are likely to hold child-centred viewpoints and I was pleasantly surprised that the police officers also felt strongly about the rights and protections of the young witnesses. I noted a “resigned acceptance” throughout the participants interviews in relation to both the process of cross-examination being “inevitable”. Several of the participants referred to the fact that cross-examination is a horrible experience for young people; but this is the way the system operates and we have to just “put up with it”. This felt like quite a defeatist position but, through the exploration of the data and reflective supervision, my mindset shifted on this. We all have a frame of reference regarding what a societal construct looks like and, if this changes radically, the salience of the experience lessens. Therefore, if we remove young people entirely from the trial process then “justice” could become watered down or meaningless to them. It could lead them to feel they have not had their chance to be listened to or heard which overall will impact on their feelings of autonomy. This represented a major shift for me, not only from a research perspective, but also my assumptions as a frontline practitioner.

This research occurred in the backdrop of austerity measures and funding issues within the court system. There is a potential risk that compassion fatigue was present amongst the participant groups and impacting their responses to the interviews. This research took place during the COVID-19 pandemic. All the interviews took place via remote technology (deviating from the original plan of face to face interviews) which, along with the usual technological difficulties, meant there was a screen between myself and the participants. This could have been seen (from a therapeutic viewpoint) as the “third person in the room”, a presence which impacts on the participants ability to be fully engaged in the process. The charity workers were more comfortable with the remote aspect of the interviews as they had been working this way for quite some time (around five to six months) by the time of interview. That being said, none of the police participants noted any particular difficulties with the remote interview process, and I didn’t observe any discomfort. I think most people, during this time in the pandemic, had accepted that remote working was “the new way of life”.

Whilst I have tried to hold my assumptions in mind it is possible that they have influenced my analysis and interpretation of the data in this research study.